



Department of Energy
National Nuclear Security Administration
Washington, DC 20585
April 27, 2010

OFFICE OF THE ADMINISTRATOR

Ms. Danielle Brian
Executive Director
Project on Government Oversight
1100 G Street, NW
Suite 900
Washington, D.C. 20005

Dear Ms. Brian:

This is in response to your February 11, 2010, letter to President Obama regarding Department of Energy (DOE) oversight of nuclear weapons laboratories. In your letter you indicated that: 1) the January 20, 2010, memorandum from the Los Alamos Site Office (LASO) to Los Alamos National Security (LANS) demonstrated systematic and massive failure of DOE and Los Alamos management to adequately enforce safety policies; 2) DOE should use its power of the purse to withhold a significant portion of LANL's contract award fee until its safety record improves; 3) the National Nuclear Security Administration (NNSA) should not withhold issuance of contractors Performance Evaluation Plans (PEPs) and Performance Evaluation Reports (PERs); 4) NNSA and the Office of Health, Safety and Security (HSS) should not reduce its government oversight; and, 5) the White House should appoint a staff liaison to ensure problems do not continue to persist at weapons laboratories.

Let me respond to each of these. First, the LASO memorandum you mentioned proactively addressed safety concerns regarding recent incidents at LANL. Each year, the Laboratory performs thousands of work activities including maintenance, facility operations, and research and development (R&D) in a safe manner. However, the series of safety incidents noted in the memorandum made it clear that we needed to reinvigorate LANL management attention on areas where work planning and control had not been robustly implemented. Our memorandum was written to point out that R&D activities deserved additional Laboratory management attention.

The Laboratory's response to our memorandum has been encouraging. Senior Laboratory leadership has engaged to address LASO concerns; they have stepped up their efforts to identify best practices and to implement them site-wide. By addressing these concerns now, the Laboratory will continue to improve its operations and minimize adverse events while accomplishing the mission.

We expect these efforts to take LANL to the next level of achieving a proactive safety culture across the Laboratory that appropriately engages workers and managers in consistent, high-quality implementation of the site's work control processes. NNSA will continue to assess the status of Laboratory improvements relative to work planning and work control.



With respect to the use of contract award fees, NNSA has and will continue to use financial incentives to drive contractor performance. This is accomplished through the performance evaluation process annually and, as necessary, through Price-Anderson Amendment Act enforcement actions. NNSA has been proactive in using both programs to incentivize performance as well as hold contractors accountable when they underperform. In Fiscal Year (FY) 09, the Laboratory did not earn full fee for its work performance. In operations, it earned approximately 80% of available fee which is inclusive of concerns relative to safety and health performance. In FY 10, there are additional performance-based incentives focused on improving the implementation of work planning and control to drive contractor improvements.

Since the mid-90s, NNSA/DOE has utilized enforcement actions to hold the Laboratory contractor accountable for poor performance. These enforcement actions have been focused on nuclear safety and security. With the recent addition of worker safety and health to the enforcement regime under 10 CFR 851, there are now ongoing enforcement investigations into worker safety and health at the Laboratory.

In 1992, DOE modified and adapted the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Program (VPP) for use by the DOE complex. VPP was established to recognize sites demonstrating an excellence in worker safety and health, including worker involvement, management commitment and procedures to effectively identify, prevent and control hazards. In 2009, LANL submitted a VPP application, which included an improvement plan to continuously bring down worker injury and illness rates. Engagement of the workforce, in partnership with Laboratory management, will continue to drive improvements in work planning and control. The Laboratory is currently undergoing an independent review of its VPP program by the Department's HSS.

As the Laboratory implements their continuous improvement activities, LASO will track and evaluate implementation of the work planning and control improvement plan. The site's focus will be to continue to improve its safety and health posture while continuing to deliver on the important mission activities supporting the national defense.

The third item in your letter discussed distribution of performance information. In past years, NNSA and its Site Offices have distributed redacted copies of annual PERs for site contractors. These reports showed both the amount of its fee each contractor received from NNSA and the reasons for the fee award. After careful review, NNSA has determined that it is inappropriate to immediately release the reasons for the fee award because that information was determined to be source selection information. Accordingly, guidance has been issued that NNSA, for a period of three years from the date of NNSA Fee Determination Official (FDO) approval, may only release the name of the contractor, the amount of the fee awarded, the percentage of the fee awarded and the grade given to the contractor. All other information may be released at the sole discretion of the contractor.

Your letter also mentioned NNSA oversight of our contractors. NNSA oversight continues to be focused on ensuring a proactive safety culture across the National Security Enterprise that appropriately engages workers and managers in consistent, high-quality implementation of the site's work control processes. Beginning in January 2010, NNSA initiated an effort to free up Headquarters personnel to focus on developing more effective and efficient Headquarters oversight of our field operations. This effort will result in better focused government oversight responsibilities, graded to ensure that higher risk nuclear, public and worker safety areas receive the appropriate degree of attention. Part of this initiative was a six-month limited moratorium on NNSA-initiated reviews. This hiatus in NNSA assessments is limited to routine internal NNSA reviews initiated at Headquarters level, such as procurement/property, energy and water management, work for others, etc. Cognizant Site Managers were provided the flexibility to allow for necessary NNSA reviews on a case-by-case basis.

In fact, high-risk safety and security reviews, as well as day-to-day operational awareness activities, facility walk-downs, operational readiness reviews, etc., were exempted from the limited moratorium. Our Site Office personnel exercise the primary Federal responsibility for overseeing the safety of contractor operations, and their standard reviews and assessments will continue. Reviews conducted by entities outside of NNSA such as the Inspector General, the Government Accountability Office, HSS and the Defense Nuclear Facilities Safety Board (DNFSB) were also exempted.

Independent of the NNSA initiative discussed above, HSS has been evaluating a variety of enhanced approaches for conducting independent safety and security oversight of DOE and NNSA facilities, and has a very active assessment schedule this year. By the end of the calendar year, HSS plans to conduct six independent safeguards and security assessments (to include force-on-force performance testing) at DOE and NNSA nuclear facilities, seven security inspections of Field Intelligence Elements and Special Access Programs, six classified information security system inspections, and ten nuclear safety inspections.

With respect to LANL in particular, the following HSS oversight activities are currently scheduled:

- An independent assessment of safeguards and security
- Four targeted nuclear safety assessments
- An emergency management follow-up review to evaluate the effectiveness of corrective actions from the previous independent oversight inspection
- A cyber security review that will include conducting a sustainability study and computer network scanning and penetration testing
- A cyber security inspection of the Los Alamos Field Intelligence Element

Furthermore, when warranted, HSS conducts independent investigations of nuclear safety, worker safety, and information security compliance issues in support of enforcement actions issued by the NNSA Administrator.

Finally, your letter indicated the appointment of a White House-designated staff person to ensure problems at our weapons laboratories are not allowed to persist. DOE and NNSA continue to provide the necessary Federal oversight of our contractors' operations. That oversight currently falls under the responsibilities of three Senate-confirmed Presidential appointees within DOE and NNSA. Additionally, the DNFSB provides advice and recommendations regarding our defense nuclear operations, bringing to bear the attention of five additional Senate-confirmed Presidential appointees and their staff who are concerned exclusively with nuclear safety. Thus, the existing regulatory structure ensures a robust, senior level of attention to ensure adequate progress in improving the safety of our operations. The LASO memorandum to the LANS is an example of our proactive effort to address safety concerns and we fully utilize the fee determination process to reward and/or penalize contractor performance.

The NNSA and its operating contractors have set an enviable record relative to safety and health when compared to U.S. industry in general. The DOE's illness and injury surveillance program has monitored the health of contractor workers since 1990, and there has been significant improvement in injury statistics over the last eight years. Nevertheless, we will always strive for improvement and to challenge ourselves and our contractors when events reveal opportunities to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "T. P. D'Agostino". The signature is written in a cursive style with a large initial "T" and "P".

Thomas P. D'Agostino
Administrator