



Department of Energy
Washington, DC 20585

October 13, 2015

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

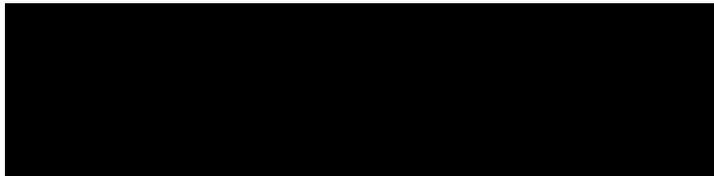
Dear Mr. Chairman:

Enclosed are the edited transcripts of the June 12, 2015, testimonies given by Madelyn Creedon, Principal Deputy Administrator, National Nuclear Security Administration; Mark Whitney, Principal Deputy Assistant Secretary for Environmental Management; and Theodore A. Wyka, Chief Nuclear Safety Advisor, Office of Environmental Management, regarding "Oversight Failures Behind the Radiological Incident at DOE's Waste Isolation Pilot Plant".

Also enclosed are answers to questions submitted by you, and two Inserts requested by Ranking Member Diana DeGette, and Representative Larry Bucshon to complete the hearing record.

If you need any additional information or further assistance, please contact me or Fahiye Yusuf, Office of Congressional and Intergovernmental Affairs at (202) 586-5450.

Sincerely,



Janine Benner
Deputy Assistant Secretary for House Affairs
Congressional and Intergovernmental Affairs

Enclosures

cc: The Honorable Diana DeGette
Ranking Member



QUESTIONS FROM CHAIRMAN MURPHY

Q1. Please provide DOE's estimate of the total costs and impacts of the fire and radiological incident at WIPP, including any taxpayer-funded DOE liabilities and penalties, estimated costs relating to the diversion of waste streams to Waste Control Specialists, the treatment of nitrate bearing TRU waste, and the hold up of waste streams at other DOE sites?

A1. The total estimated costs for the Waste Isolation Pilot Plant (WIPP), Los Alamos National Laboratory (LANL) and other waste generator sites, including fines and penalties assessed, are as follows:

WIPP Recovery: The Department is currently reviewing costs for WIPP recovery and anticipates having a revised cost and schedule plan this fall.

The estimated cost range for the capital asset projects required for normal operations, a new safety-significant ventilation system and a new exhaust shaft, as documented in Critical Decision-0, Approve Mission Need, is \$77-\$309 million. This cost range will be updated after approval of Critical Decision-1, Approve Alternative Selection and Cost Range.

LANL: As of the end of June 2015, LANL has incurred approximately \$30 million for waste re-characterization, investigations, relocation, and storage. LANL is currently working on a plan to treat the nitrate salt waste, and as such, does not have a final cost estimate. A significant component of the cost and schedule is expected to be regulatory permitting and nuclear safety planning, documentation and upgrades. Implementation of corrective actions for the transuranic waste program in response to Phase II of the Department's Accident Investigation Board (AIB) Report for the radiological release at WIPP and other programmatic and operational readiness reviews will need to be completed before remediation of the nitrated salts can begin, and general TRU legacy waste processing and packaging operations can resume at LANL. With the impacts of not being able to ship, the LANL program extension may include additional years of storage costs that are not yet estimated. Continued storage of the LANL TRU inventory at Waste Control Specialists is expected to require approximately \$6 million annually.

Other Waste Generator Sites: As of July 2015, other DOE sites with transuranic waste have incurred incremental costs for extended storage of waste in existing onsite facilities and other response activities estimated to be approximately \$15 million.

Fines and Penalties: In December 2014, the State of New Mexico levied \$54.3 million in fines against DOE and its contractors for alleged violations of the New Mexico Hazardous Waste Regulations at LANL and WIPP. DOE and the State of New Mexico signed a “General Principles of Agreement” document in April 2015, which described a pathway to settlement of these alleged violations. DOE and the State of New Mexico are working to finalize a settlement, which would address all claims against the Department. The supplemental environmental projects described in that document include the improvement of roads and transportation routes around the WIPP site in southeastern New Mexico; the improvement of transuranic waste transportation routes in and around Los Alamos; upgrading critical water infrastructure in and around Los Alamos; the construction of engineering structures to increase monitoring capabilities around LANL to better manage storm water flows; the construction of an emergency operations center in Carlsbad; and providing enhanced training for emergency responders and mine rescue teams; and the funding of an independent triennial compliance and operational reviews. These projects are expected to be conducted over a period of years. Associated costs are currently being evaluated.

- Q1a. What are the risks that the WIPP shutdown will cause other states to violate their compliance agreements with states?
- A1a. TRU waste generator sites have sufficient storage capacity for certified waste ready for WIPP disposal through fiscal year 2016. The Department will continue to evaluate sites’ storage capacity and available off-site options, if necessary. Until these options are thoroughly analyzed, it is premature to assess impacts to compliance agreements.
- Q1b. When does DOE estimate the WIPP will begin full operations, including complete resumption of transportation of waste from sites around the nation?
- A1b. The Department is committed to reopening WIPP as quickly as possible in a safe and compliant manner. In light of the safety-related activities that must be completed before

waste emplacement operations begin, a new target date for initial waste emplacement operations must be established. The Department is currently reviewing the schedule for resumption of operations and anticipates having a revised plan this fall. DOE will only resume operations when it is safe to do so.

WIPP cannot commence normal operations until the new ventilation system capital asset projects are completed, which will allow an increase in airflow from the current high efficiency particulate air filtered 60,000 cubic feet per minute to 420,000 cubic feet per minute. The design, procurement and construction activities associated with these projects will span multiple years.

Q2: Please detail the timing and nature of the commitments entered into by the Department of Energy with the State of New Mexico regarding TRU waste shipments and disposal, along with an explanation of any associated fines and penalties related to those missed milestones.

A2. On April 30, 2015, the Department of Energy and the New Mexico Environment Department (“NMED”) signed the “General Principles of Agreement HWB-14-24 and HWB-14-21” document, available at https://www.env.nm.gov/NMED/Issues/documents/FINALPrinciplesofAgreement4_30_15Signed.pdf. This document will govern the resolution the allegations contained in the two administrative compliance orders issued by NMED to the Department of Energy and its prime contractors at the Los Alamos National Laboratory and Waste Isolation Pilot Project related to the February 2014 salt truck fire and radiologic incident at WIPP. The General Principles document memorializes commitments to settle the allegations by performing supplemental environmental projects in lieu of paying fines and penalties. It is expected that final settlement will occur in the next several months. Once a final settlement has been reached, we will provide your office with the settlement.

Q2a. Do those commitments include flexibility to accommodate changes in availability of federal appropriations?

A2a. Yes. The General Principles document specifically states that it is not intended to obligate DOE to expend funds in excess of available appropriations.

- Q2b. Does the contractor make those commitments or is that the sole responsibility of the Department?
- A2b. The General Principles document was signed by NMED, DOE, Los Alamos National Security, LLC (DOE's prime contractor at LANL), and Nuclear Waste Partnership, LLC (DOE's prime contractor at WIPP).
- Q2. To what extent does the responsible contractor participate in those state commitments?
- A2c. DOE's contractors at LANL and WIPP are full participants, as appropriate, in fulfilling the commitments contained in the General Principles document.
- Q3. The oversight failures associated with this event were systemic. The concern raised is whether there are similar weaknesses at other site operations, at Los Alamos or other high hazard work at sites around the country. What are you doing to assess the state of oversight conditions around the National Nuclear Security Administration's (NNSA) and the Office of Environmental Management's (EM) sites?
- A3. The Office of Environmental Management (EM) is improving the strength and rigor of the DOE Carlsbad Field Office (CBFO) oversight program through:
- Creation of a new oversight organization at CBFO, the Operation Oversight Division, which provides dedicated Federal oversight of contractor operations at the Waste Isolation Pilot Plant.
 - Increasing the number of Federal oversight staff at CBFO.
 - Adding additional subject matter expertise and personnel with nuclear facility operational experience.

EM is improving Headquarters (HQ) oversight programs through:

- Increasing staff within the Safety, Security and Quality Programs organization.
- Revising the oversight program to include implementation of integrated oversight reviews.
- Formal tracking of issues in the EM Corrective Action Hub.
- Post review discussions with the Safety, Security and Quality Programs Deputy Assistant Secretary.
- Development of a robust oversight program that consists of both a Base program

and Recovery program.

- Reviews of EM functional areas to evaluate contractor responses to trends and events and that crosscutting programs, such as DOE oversight and contractor oversight.

Additional, specific oversight improvements:

- EM is revising its federal oversight assessment criteria focusing on federal oversight programs.
- Reviews of the maintenance programs were conducted at all EM sites. Actions include: (1) Performing a review to identify and correct fire protection impairments; (2) Providing direction to EM contractors to track and report trending information for the minimum set of maintenance related metrics, and (3) Defining applicable set of safety-related systems, and initiate adjustments to data collection/metrics systems to allow for periodic monitoring of these systems and tracking of operable status.
- The Accident Investigation Board reports were distributed to the EM field sites with the requirement that they be discussed with federal staff and contractor management. An EM Leadership forum was convened to discuss contributing causes, vulnerabilities and path forward from the Waste Isolation Pilot Plant (WIPP) and Los Alamos National Laboratory (LANL) event. One action from this forum is the need to focus attention on Federal and contractor oversight in an upcoming workshop.
- DOE completed an assessment of the chemical stability of the transuranic (TRU) waste inventory at those sites that were actively processing and shipping TRU waste to WIPP at the time of the incident (Idaho, Oak Ridge, and Argonne).
- An extent of condition review of the Federal oversight across the DOE complex is also an action being developed in the Corrective Action Plan for the Accident Investigation Board (AIB) report, Phase II.

EM is improving the structure and strengthening the execution of oversight at Los Alamos:

- Los Alamos is developing corrective actions to the AIB Phase II Report. These actions will be identified in the Corrective Action Plan (CAP) that will be reviewed with EM management. Implementation of the corrective actions will specifically address both contractor and federal oversight at LANL.
- EM has established the EM Los Alamos Field Office (EM-LA) as the first step in aligning the mission and the oversight responsibilities for TRU waste processing and storage activities. As the transition at LANL evolves and EM-LA establishes a nuclear safety staff separate from the existing NNSA safety organization, a formal alignment of nuclear safety oversight responsibilities will ensure a robust oversight model as we move forward.
- In the interim, EM-LA and the NNSA Los Alamos Field Office are collaborating on the review and approval of nuclear safety analyses pertaining to TRU waste management.
- In addition, EM-LA is increasing direct oversight and integration on all environmental cleanup matters, which will facilitate greater integration with other EM sites, including sharing lessons learned and information related to the WIPP incidents, e.g., improvements in safety, fire protection, emergency preparedness, maintenance, waste characterization and packaging, quality assurance, etc.
- EM-LA has brought in expertise in various disciplines to supplement existing staff and is pursuing recruitment of additional resources to ensure high risk areas are adequately covered.
- EM-LA is establishing training and qualifications for oversight staff occur during the transition period from NNSA to EM.

The National Nuclear Security Administration (NNSA), in addition to the corrective actions taken to address the systems and processes that contributed to this event, is working on several fronts to improve our approach to site governance. We have kicked off two specific initiatives. The first initiative is to better define the NNSA governance model with specific attention to more clearly identifying expectations regarding contract management and oversight; and clarifying the roles and responsibilities between the NNSA field and Headquarters (HQ) elements, and in the case of Los Alamos, the

Department's Office of Environmental Management (EM) as well. Issuance of the NNSA policy, guidance, and implementing procedures will improve upon the current federal oversight and contractor assurance systems. These documents will also further clarify roles, responsibilities, and accountability between federal personnel and contractors. HQ and field office personnel are participating in the development of the governance model and will be making needed changes to oversight where needed based on the new model and lessons learned from this event. The second is to examine our contract fee structures to ensure that we are incentivizing the right behaviors while also holding the Labs and Plants accountable. These actions will help ensure that we do not repeat the mistakes that gave rise to this event, and will help improve operations across the entire enterprise.

Q4. The Los Alamos National Laboratory's independent report by Longenecker & Associates on the incident noted that management lacked "competencies commensurate with responsibilities" among other failures. What are NNSA and EM doing to ensure federal site offices maintain the appropriate oversight competencies?

A4. DOE has instituted a Technical Qualification Program to ensure that critical skill shortages are identified and assessed annually. Federal employees are vetted by the federal site manager prior to filling a position, including oversight positions. Senior federal site officials directing and providing oversight of the contractor must be qualified as Senior Technical Safety Managers. If qualified individuals are not available, compensatory measures must be put in place. The Office of Environmental Management's (EM) Safety, Security and Quality Programs Office assessments of federal oversight specifically evaluate whether senior DOE managers have completed and are current in their Senior Technical Safety Manager qualifications.

The EM and National Nuclear Security Administration (NNSA) Field Offices at Los Alamos are addressing oversight and oversight competencies in a very structured way. First, they are clarifying the part each organization is expected to play in providing comprehensive oversight coverage through the development of a Memorandum of Understanding (MOU). The MOU outlines and documents a mutually agreed upon understanding of: accountabilities and authorities; roles & responsibilities; nuclear safety

requirements; and, regulatory compliance. This approach reflects the adoption of many responsibilities for legacy waste management by a newly formed EM Field Office, and the retention of some responsibilities for newly generated waste associated with current NNSA operations by the NNSA Field Office. Both the EM and NNSA field offices at Los Alamos are evaluating their respective organizational structures and identifying specific staffing needs related to line management and oversight functions based on the division of responsibilities.

The EM and NNSA field offices will prepare DOE Los Alamos National Laboratory (LANL) Contractor Operations Oversight Plans and will work collaboratively to form a consistent, comprehensive oversight model for LANL to ensure flow down of requirements.

Required expertise has already been hired at the EM Field Office, and additional required staff will continue to be recruited through an open and competitive process. The federal staff will be trained and qualified to execute requirements and policies for oversight, facility access, and regulatory compliance. Coordinated annual Integrated Assessment Plans that focus on risk areas will be developed, and targeted reviews will be performed to evaluate the contractor's systems/processes. Both EM Headquarters and NNSA Headquarters will monitor the execution of those plans.

It should be noted that the Longenecker Report was commissioned by DOE's prime contractor at the LANL, Los Alamos National Security, LLC (LANS), as an external assessment of the events that led up to the Waste Isolation Pilot Plant (WIPP) event. The Judgments of Need noted in the report, identifying the need that management competencies be commensurate with their responsibilities, was focused on the contractor (LANS) staff that managed and executed this work within the Associate Deputy for Environmental Projects (LANS directorate that executed the work), and not Federal oversight, which is addressed in the response above.

- Q5. Please explain the origins and purposes of the Management and Operating (M&O) model for conducting the work at DOE's high hazard nuclear sites.

A5. Congress adopted the scientific, technical, and business model of the Manhattan Project when it created the Atomic Energy Commission (AEC) structure in the Atomic Energy Act of 1947. Subsequent organizations, the Energy Research and Development Administration (ERDA) from 1974 to 1977, and the Department of Energy (DOE), from 1977 to the present, have carried forward the business and scientific model inherent in management and operating contracts.

The legislative history of the Atomic Energy Act of 1946, in S.Rept. 1211, 79th Cong. 2d Sess. 15 (1946), indicates the basic principle that underlies M&O contracts was that the AEC, a predecessor of DOE, was to employ highly capable companies and educational institutions to carry out the actual performance of the agency's mission; that is, the contractors were to perform the agency's mission as opposed to the agency's using civil servants: "Wherever possible, the committee endeavors to reconcile Government monopoly of the production of fissionable material with our traditional free-enterprise system. Thus, the bill permits management contracts for the operation of Government-owned plants so as to gain the full advantage of the skill and experience of American industry."

The unique M&O contract relationship enables the Government to establish objectives for the laboratories' research programs and to exercise controls necessary to assure security, safety, and the prudent use of public funds, while allowing private sector organizations selected for the technical ability and managerial expertise to carry out the laboratories' day-to-day operations for stewardship of the site infrastructure.

Both the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) recognize the unique nature of M&O contracts. FAR Subpart 17.6 specifically allows the Secretary of DOE to authorize an M&O contract under specified limited circumstances as a special contracting method, this authorization cannot be delegated. To enable the M&O contract model, DOE has developed an extensive set of procedures and clauses within DEAR Subpart 970 to implement and supplement the FAR for the award and administration of the agency's M&O contracts.

Q6. Please explain the liability structure under which DOE and its contractor community perform work throughout the laboratory and cleanup complex.

A6. The liability structure depends on the contract language. In most cases, DOE contractors operate under cost type contracts where DOE bears all of the allowable costs of performance, and would paraphrase the cost principle regarding fines and penalties, 31.205-15, under which violations are unallowable costs “except when incurred as a result of compliance with specific terms and conditions of the contractor or written instructions from the contracting officer.” This establishes a distribution of financial risk commensurate with the contract type and the relative responsibility of the parties. The contract includes two clauses that relate to financial liability:

- H.30 Contractor Acceptance of Notices of Violation(s) and Fines and Penalties
- I. 161 DEAR 970.5232-2 Payments and Advances (DEC 2000) Alternate II (DEC 2000) Alt. III (DEC 2000) (j)

The process for handling violations consists of several steps:

- The contractor shall accept, in its own name, notices of violation(s) (NOV) and fines and penalties issued directly to the contractor, without regard to liability.
- The contractor shall notify the Contracting Officer (CO) promptly when it receives notices from the regulators of NOVs and fines and penalties.
- If the contractor is not responsible for the cited NOV or a fine/penalty under this contract, the contractor shall immediately notify the Government and the regulator.
- Any NOVs, fines or penalties associated with any act or failure to act by a previous contractor for the site shall be processed under the clause Pre-existing Conditions.
- The contractor shall be free to conduct negotiations with regulators regarding NOVs, fines and penalties issued directly to the contractor. The contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the CO or his authorized representative.

Failure to obtain such advance written approval may result in allowable costs being declared unallowable and/or the contractor being liable for any excess costs to the Government.

- The Contracting Officer shall determine allowable costs. If a cost is allowable, the contractor can bill the Department of Energy for reimbursement.

Q7. Please explain the role played by the Price Anderson Act as it relates to DOE and the contractor community's work at DOE sites.

A7. The Price Anderson Act, passed in 1957 as an amendment to the Atomic Energy Act of 1954, provides a system of financial protection for persons who may be injured by and persons who may be liable for a nuclear incident. Under the Price Anderson Act, DOE provides indemnification to DOE contractors who manage and operate nuclear facilities in the DOE complex; associated subcontractors and suppliers are included under this coverage. By indemnifying the contractor, the government acts as an insurer against any findings of public liability arising from the nuclear activities of the contractor within the scope of its contract.

In 1988, the Price Anderson Amendments Act of 1988, 42 U.S.C. 2282a (PAAA) was enacted to, among other things continue this indemnification and require DOE to include an indemnification in each contract that involves the risk of a nuclear incident. As part of its approval to continue the indemnification coverage, Congress required that DOE-indemnified contractors, subcontractors, and suppliers be made subject to civil penalties for violations of DOE's nuclear safety requirements. On August 17, 1993, DOE published its nuclear safety enforcement procedural rules and enforcement policy, 10 C.F.R. Part 820, which outlines the appropriate conduct of persons involved in DOE nuclear activities. The ultimate goal of 10 C.F.R. 820 is to ensure that all persons subject to the requirements enumerated in the DOE Nuclear Safety Requirements are in compliance with said requirements.

Both the Department of Energy Organization Act, 42 U.S.C. 7101, and the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, require DOE to protect the public

health and safety, as well as the safety of workers at DOE facilities, in conducting its nuclear activities, and grant DOE broad authority to achieve this goal.

The DOE goal in the compliance arena is to enhance and protect the radiological health and safety of the public and worker at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with DOE Nuclear Safety Requirements. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of non-compliances, and the initiation of comprehensive corrective actions to resolve both the noncompliance conditions and the program or process deficiencies that led to noncompliance.

In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE endeavors to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. These initiatives and activities will be duly considered in exercising enforcement discretion.

The PAAA provides DOE with the authority to compromise, modify, or remit civil penalties with or without conditions. In implementing its authority, DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to nuclear facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

DOE's Office of Enterprise Assessments (EA), has the responsibility to carry out the statutory enforcement authority provided to DOE in the PAAA.

- Q8. Please provide an explanation of the Department of Energy's specific oversight responsibilities at the Los Alamos National Laboratory and the Waste Isolation Pilot Plant.
- A8. Oversight responsibilities at Los Alamos National Laboratory (LANL) and the Waste Isolation Pilot Plant (WIPP) are summarized as follows:

LANL Field Office (EM-LA): The Department is enhancing the Los Alamos Field Office oversight of LANL waste management activities with emphasis on a comprehensive evaluation of changes (configuration management) to systems, processes, procedures and plans, conduct of operations, and to ensure compliance with regulatory requirements. The enhanced DOE Field Office oversight will occur prior to resumption of transuranic waste repackaging.

Once fully established, the EM Los Alamos Field Office will provide oversight of the LANL EM scope execution. Day-to-day oversight of field activities at the site will be performed by EM staff and augmented by NNSA staff in its landlord function. Facility Representatives are assigned responsibility by the Field Manager for monitoring the safety performance of the facility and its operations. These individuals are the primary point of contact with the contractor for operational and safety oversight.

Additionally, EM-LA will be conducting surveillances and field inspections to ensure compliance with regulatory requirements on-site and at disposal sites such as WIPP. Prior to the resumption of TRU waste processing activities, several readiness reviews will be conducted. Additionally, the nuclear safety documentation for those LANL facilities utilized for TRU waste management are currently being revised and upgraded.

Carlsbad Field Office (CBFO): The CBFO provides primary oversight to the site Management and Operating contractor, Nuclear Waste Partnership (NWP) and its subcontractors. Day-to-day oversight of field activities at the site is the responsibility of the CBFO staff in the new Office of Operations Oversight. Facility Representatives are

assigned responsibility by the Field Manager for monitoring the safety performance of the facility and its operations. These individuals are the primary point of contact with the contractor for operational and safety oversight. The CBFO Facility Representatives report to the new Facility Oversight Division Director, but also report to the CBFO Manager through regularly scheduled meetings and periodic impromptu reports.

The CBFO's Office of Operations Oversight is developing and implementing a new contractor oversight program that fully addresses the requirements of DOE O 226.1B, Implementation of the Department of Energy Oversight Policy. The program will ensure that processes for planning, conducting and documenting oversight evaluations of NWP programs and activities are developed; issues are evaluated and corrected to prevent recurrence and communicated to management in a timely manner; and CBFO oversight personnel are adequately qualified and trained to perform their oversight function. The CBFO Manager, along with the Office Assistant Managers and Division Directors, will hold personnel accountable for implementation of the oversight program by revising position descriptions for their staff to identify expected oversight functions for the position.

Specific to CBFO's oversight of the transuranic waste program, a number of improvements are being contemplated at CBFO and within the management and operations contractor Central Characterization Project, as part of the Corrective Action Plan in response to the Accident Investigation Board (AIB) Phase II Report, including:

- CBFO:
 - Enhancing oversight at waste generator sites, including waste generator site reviews of transuranic waste processing systems;
 - Approving all new and revised Acceptable Knowledge Summary Reports prior to certification;
 - Increasing reviews of procedure changes (e.g., changes that could lead to waste incompatibilities);
 - Increasing interactions with generator site DOE offices to verify appropriate levels of oversight are provided; increasing oversight of the

Central Characterization Project and clarifications of roles and responsibilities.

- Central Characterization Project:
 - Updating interface agreements with waste generator sites to require process changes impacting transuranic waste be fully communicated and to ensure the handling of specific waste is directed through the proper channels such that the directed controls are fully understood, formalized and implemented;
 - Verifying information provided for Acceptable Knowledge by walking down processes that generate, package, remediate, or otherwise change the waste form.

Office of Environmental Management (EM) Headquarters (HQ): Field Managers report to the DOE Headquarters, which provides support to the field sites in the form of policies, DOE orders, resources (budget and human capital), mission support, emergency management, quality assurance, nuclear safety, security, independent oversight, etc.

Within EM HQ, the Office of Safety, Security and Quality Programs (EM-40) has oversight responsibilities for the areas of safety and health, security and Quality Assurance (QA). EM-40 plans and implements a schedule of oversight and awareness activities, based on meeting established requirements and also in response to perceived areas of declining performance or significant events.

Planning for enhanced DOE Order 435.1, Radioactive Waste Management enhanced oversight is ongoing. EM Headquarters oversight and involvement will be increased prior to the resumption of repackaging of transuranic waste in accordance with the AIB Phase II Report Judgments of Need. Details are in development.

Prior to resumption of shipments to WIPP, the packaged waste will be reviewed against new transuranic waste program requirements, programs and processes.

Q8. How are those responsibilities tracked and verified?

A8a. CBFO develops an annual Integrated Evaluation Plan (IEP) that is used to plan and track evaluations and assessments across many project-related areas. CBFO has several policies and procedures that address oversight activities such as quality assurance (QA) audits, surveillances, and other project verifications. CBFO is required to implement an oversight program in accordance with DOE Order 226.1B. CBFO also implements a Technical Qualification Program (TQP) in accordance with DOE O 426.1, Federal Technical Capability.

The HQ review process includes the following elements:

- A baseline assessment program that reviews a set of identified topics at all EM sites on a regular (approximately every 3 years) periodicity. The baseline program will review DOE field element oversight activities and will also sample the performance of selected contractor functional areas, including various Contractor Assurance System (CAS) elements.
- Increased depth in assessments of emergency management/emergency response.
- Formal tracking of identified assessment issues on the EM Corrective Action Hub.

At LANL, the Office of Environmental Management has established a new Field Office. This new office is working to enhance the posture of its oversight. Until this office is fully staffed, oversight activities will be coordinated with the NNSA Field Office (NA-LA), while the EM-LA oversight functions are being fully developed. A Memorandum of Understanding between the NA-LA and EM-LA for the Transition of Legacy Environmental Cleanup Work at Los Alamos from NNSA to EM has been developed. The reliance on NA-LA oversight support will continue until such time that EM-LA has the requisite staff to perform this function for their areas of responsibility. NA-LA and EM-LA offices will develop an Annual Integrated Assessment Plan that focuses on risk areas and will be coordinated to maximize resources and avoid duplication. The intent of this plan is to prioritize and schedule assessments and to identify areas that require a high level of oversight (e.g. high hazard operations, waste repackaging operations) to ensure that critical LANS programs and operations (e.g. conduct of operations program, high hazard operations) have been adequately evaluated and assessed, and have the proper

level of oversight. This plan will identify a set of core assessments that will be conducted on an annual basis. These assessments will be part of the implementation of DOE Order 226.1B and will be tracked and closed per the plan.

Q8b. Describe the frequency and scope of oversight-related communications between DOE and sites, and site offices and DOE headquarters.

A8b. Consistent with the enhanced rigor of oversight programs, CBFO and EM HQ are increasing the frequency and scope of communications between DOE sites and HQ, e.g., via increased number of reviews and audits, weekly technical and management telecons and reports on status of recovery efforts, monthly tracking of corrective action status, biweekly/monthly site assist visits by technical staff, quarterly visits by senior management, quarterly Field Managers meetings, weekly discussion with contractor's corporate management, establishment of Operational Support Teams in key functional areas, periodic DOE Order 435.1, Radioactive Waste Management interactions and reviews/audits and daily discussions on technical, safety, corrective action, management, and project management topics and issues.

Q9. What methods and tools does DOE have to hold its contractors accountable for performance?

A9. The Department has a number of ways to hold contractors accountable for performance of work performed under a DOE contract. While not an exhaustive list, here are general concepts. DOE's contracts generally contain a right of inspection that provides it with the right to inspect work performed and to direct the contractor to rectify errors. For contracts that contain award fee provisions, DOE fee determination officials can lower contractor award fee in response to contractor poor performance. For contracts that contain conditional payment of fee clauses, DOE can recoup fee already paid in response to certain serious events as set forth in the conditional payment of fee clause. DOE can also exercise termination rights and/or exercise rights under performance guarantees consistent with the terms of the contract. DOE can report poor performance in the government-wide past performance database (CPARs) that is used by federal agencies when awarding new federal government contracts. Poor CPAR ratings can affect a contractor's ability to get new work with the federal government.

- Q9a. Identify the largest penalty and/or fee reduction assessed against a DOE contractor, and for what reasons.
- A9a. The largest single penalty imposed on a contractor for a specific event arose from the February, 2014, radiological contamination event at the Waste Isolation Pilot Plant (WIPP) at Carlsbad, NM. The event resulted from the improper treatment of nitrate salts waste at Los Alamos National Laboratory, and the penalty was imposed on the Laboratory's contract operator, Los Alamos National Security, LLC (LANS). The event led to very large cost and operating burdens on WIPP and on the many DOE users who rely on WIPP as a waste repository. During the performance period, LANS also had challenges in operating nuclear facilities and there were instances of ethical lapses involving senior Laboratory staff. As a result, the contractor forfeited all Department of Energy (DOE) fees totaling \$52.7 million, failed to achieve an award term and a previously awarded contract was revoked; thereby reducing the period of performance by one year.
- Q9b. Please explain the consequences that switching contractors at a Major lab site would have on the workforce, mission accomplishment, project timing (cost and schedule), and overall monetary cost of transition and competition.
- A9b. The consequences on the workforce of switching contractors at a major lab site are considered minimal because typically only the key personnel change with the new contract and the incumbent employees are offered Right of First Refusal for jobs at the site. As the overall workforce generally remains in place, mission accomplishment and project timing (cost and schedule) are not impacted. However, competition at a Management and Operating (M&O) site creates an environment of uncertainty for the incumbent contractor and may cause distractions for key personnel who must focus on achieving mission while preparing for the competition. While switching contractors at an M&O site may be a distraction, consequences are considered minimal and are offset by the benefits associated with competition.
- Q10. In 2013, the National Academy of Public Administration released a report evaluating DOE's management and oversight of the national labs. Among the report's many conclusions, the Panel recommended that DOE revise its order on Contractor Assurance Systems to provide more explicit guidance designing and implementing mature Contractor Assurance Systems. What, if any steps, is the Department taking to develop

more explicit guidance to assist all components, including NNSA and Environmental Management, in improving oversight of contractor assurance systems?

A10. We do not believe that additional detail in the Department of Energy (DOE) Order is required. However, National Nuclear Security Administration (NNSA) is in the process of reformulating its overall Site Governance approach which will highlight the need for better Management and Operating (M&O) to federal government cooperation and coordination featuring a shared understanding of “system” health. This revised policy and implementing guidance will better define roles and responsibilities, requirements and expectations for federal oversight and contractor assurance systems, key methodologies, and an independent peer review process. All management and operating contracts have requirements for implementation of an effective assurance system. These systems will continue to mature and evolve based on federal oversight, review of best practices, and coupled with the peer review process will ensure continuous improvement.

Q11. The November 2014 Report of the Congressional Advisory Panel on the Governance of the Nuclear Security Enterprise identified a number of weaknesses in NNSA's current oversight model, including "wasteful and ineffective transactional oversight." Citing a number of examples, including the breakdowns at Y-12, the authors noted "What is needed is not more oversight but better oversight." They added, "Multiple layers of process cannot by themselves ensure zero risk or high confidence in mission performance."

- a. What is the Department's response to these observations by the Congressional Advisory Panel, specifically the idea that "What is needed is not more oversight but better oversight?"
- b. What is necessary to establish the right balance and what is the Department doing to achieve this, both at NNSA and other DOE offices?

A11. NNSA is in the process of reformulating its overall Site Governance approach which will highlight the need for better Management and Operating (M&O) and federal government coordination featuring a shared understanding of “system” health. This shift in focus from individual deficiencies to broader understanding of systemic issues should directly address the concern regarding inappropriate oversight pulling resources and energy away from a more complete understanding and management of the relative risk of

operations. What is necessary is that there is a more complete understanding of and where appropriate, mitigation for these risks.

INSERT FOR THE RECORD FROM RANKING MEMBER DIANA DEGETTE

- Q1. Please supplement your response during the hearing addressing the lack of cohesion among contractor oversight policies and compliance at the different DOE agencies. Would additional guidance or requirements from DOE help address this problem?
- A1. Our oversight policies are implemented through Department of Energy (DOE) Directives that are issued at the department level, and followed by all offices of the DOE, as required. Where specific directive language includes contractor requirements, they are included in DOE contracts. These directives are consistent with statutes and regulations.

INSERT FOR THE RECORD FROM REPRESENTATIVE LARRY BUCSCHON

Q1. How is the fine against the contractor levied? If the contractor is deemed responsible for the accidents, why is the contractor not required to pay the entirety of the clean-up and repair costs? Does it have something to do with how M&O contracts operate?

A1. Fines are levied against the contractor in different ways, but the most common approach is through a mutual agreement of the parties. A bilateral agreement addressing the terms and conditions associated with the fine/penalty is normally incorporated into the contract via modification. The bilateral agreement will outline the methodology for reaching the amount of the fine. Payment of the fine is normally a reduction to the available fee pool included in the existing contract. For example, because of the impact of the Waste Isolation Pilot Plant (WIPP) incident National Nuclear Security Administration (NNSA) withheld \$57.2M of fee in FY14, which included the entire award, at-risk fee, and fixed fee available to the contractor for work performed for the Department of Energy (DOE)/NNSA. Absent existing funds on the contract, the contractor will issue a check to the US Treasury to cover the fine.

DOE and NNSA Management and Operating contracts are cost reimbursement, level of effort contracts. This means that although the contractor may lose the fee for unsatisfactory performance, generally, unless determined unallowable under the standards identified in the FAR, the costs for cleanup and repair are covered as they would be under any other cost reimbursement contract.