DOE'S NUCLEAR WEAPONS COMPLEX: CHALLENGES TO SAFETY, SECURITY, AND TAXPAYER STEWARDSHIP

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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C O N T E N T S

[1] Mr. D'Agostino and Mr. Podonsky did not present statements for the record.

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WEDNESDAY, SEPTEMBER 12, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Terry, Burgess, Blackburn, Scalise, Gardner, Griffith, Barton, DeGette, Schakowsky, Castor, Markey, Green, Christensen, and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Carl Anderson, Counsel, Oversight; Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Karen Christian, Deputy Chief Counsel, Oversight; Andy Duberstein, Deputy Press Secretary; Heidi King, Chief Economist; Krista Rosenthall, Counsel to Chairman Emeritus; Alan Slobodin, Deputy Chief Counsel, Oversight; Peter Spencer, Professional Staff Member, Oversight; Alvin Banks, Democratic Investigator; and Tiffany Benjamin, Democratic Investigative Counsel.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning, everybody, and I welcome our witnesses to the Oversight and Investigation Committee. Today's Subcommittee on Oversight and Investigation will review challenges to safety, security, and taxpayer stewardship in the Department of Energy's nuclear weapon complex.

DOE is responsible for securing and maintaining the most dangerous materials on the planet, including nuclear warheads. This is one area that must have effective oversight.

This committee, principally through the work of this subcommittee, has a long history of bipartisan scrutiny of the Department of Energy's oversight and management of the contractors that are charged with running DOE's nuclear weapons programs and operations. And the lessons from our committee's past investigations and related GAO, Inspector General, DOE's oversight reports should guide our bipartisan review of the current situation.

My colleagues, chief among these lessons is that independent and effective oversight is simply essential and necessary. The safety and security risks involved in overseeing the Nation's nuclear facilities are enormous, and this committee must be vigilant about maintaining the exhaustive oversight that the committee has traditionally had in this area.

DOE, through its National Nuclear Security Administration or NNSA, manages programs that involve high-hazard nuclear facilities and materials, the most sensitive national security information, and complex construction and environmental cleanup operations that pose substantial safety, public health, and environmental risks. Interestingly, all of these programs are carried out by contractors, both at the national labs and at DOE's weapon production facilities.

These contractors and their Federal managers, spending billions of taxpayers' dollars on dangerous nuclear projects, require rigorous oversight. Today we will review what DOE has done in recent years to reform its oversight and program management. I welcome our witnesses from DOE, the DOE Inspector General, and the GAO, who will help us in examining this important issue.

When government vigilance is not sufficiently rigorous, problems obviously occur. The case in point is a recent security failure at the Y–12 National Security Site in Oak Ridge, Tennessee, this past July. By all accounts contractors and site managers' failures at Y–12 allowed one of the most serious security breakdowns in the history of the weapons complex.

But Y–12 is but the latest in a string of failures. Over the past decade we have seen security breaches and management failures at Los Alamos National Laboratory in New Mexico. GAO testimony will remind us all of one, 5-year period after 9/11 in which 57 security incidents occurred, more than half of which involved a confirmed or suspected release of data that posed the most serious rating of threat to the United States security interest.

In another example investigated by this subcommittee in 2008, the Lawrence Livermore National Lab gave itself passing marks on its own physical security, and the NNSA Federal onsite managers gave it a passing mark, too. Only when DOE's Office of Independent Oversight actually tested the security independently was it evident that the lab deserved the lowest possible rating for protective force performance and for physical protection of classified materials.

On the safety front, the experience has been no better. From 2007 to 2010, the Lawrence Livermore Lab has multiple events involving uncontrolled worker exposure to beryllium, which can cause a debilitating and sometimes fatal lung condition. During this period the lab determined it was compliant with DOE's safety regulations. It took an independent department oversight review to determine that the contractors' program violated the regulations.

Now, this past May the DOE Inspector General reported that Sandia National Laboratories had not held its line managers accountable for implementing an important system for preventing and reducing injuries. Neither the contractor nor the Federal site manager had addressed problems that had been identified in this program for more than a decade.

For more than 20 years GAO has designated DOE contract management oversight relating to the weapons complex as high risk for fraud, waste, abuse and mismanagement. We have seen examples of this multi-billion dollar cost increases and schedule delays in important NNSA construction projects.

In the meantime, directors of the national laboratory and others claim that Federal oversight is too burdensome and intrusive and that DOE should back off and let the contractors operate as they see fit. Our friends at the Armed Services Committee have moved legislation through the House that would dramatically limit DOE's ability to conduct independent, internal oversight over its program management and the contractors.

I recognize that NNSA has not been delivering all that is expected of it, but this committee, given its jurisdictional and longtime policy interest in effective DOE management has to diagnose the problems for itself independently. We need to examine the facts, follow the evidence, identify what works and what doesn't work, and identify a clear path to ensuring safe, secure operations, in the interests of taxpayers, and of course, our national security.

[The prepared statement of Mr. Stearns follows:]

Opening Statement of the Honorable Cliff Stearns
Subcommittee on Oversight and Investigations
Hearing on "DOE's Nuclear Weapons Complex: Challenges to Safety, Security, and Taxpayer Stewardship"
September 12, 2012
(As Prepared for Delivery)

Today the Subcommittee on Oversight and Investigations will review challenges to safety, security, and taxpayer stewardship in the Department of Energy's nuclear weapons complex.

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When government vigilance is not sufficiently rigorous, problems occur. A case in point is the recent security failure at the Y-12 National Security Site in Oak Ridge, Tennessee, this past July. By all accounts, contractor and site managers' failures at Y-12 allowed one of the most serious security breakdowns in the history of the Weapons Complex.

But Y-12 is but the latest in a string of failures. Over the past decade we have seen security breaches and management failures at Los Alamos National Laboratory, in New Mexico. GAO testimony will remind us of one five-year period, after 9/11, in which 57 security incidents occurred, more than half of which involved the confirmed or suspected release of data that posed the most serious rating of threat to U.S. security interests.

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For more than twenty years, GAO has designated DOE contract management and oversight relating to the weapons complex as high risk for fraud, waste, abuse, and mismanagement. We have seen examples of this in multi-billion dollar cost increases and schedule delays in important NNSA construction projects.

In the meantime, directors of the national laboratories and others claim that federal oversight is too burdensome and intrusive, that DOE should back off and let the contractors operate as they see fit. Our friends on the Armed Service Committee have moved legislation through the House that would dramatically limit DOE's ability to conduct independent internal oversight over its program management and the contractors.

I recognize that NNSA has not been delivering all that is expected of it. But this committee, given its jurisdictional and long-time policy interests in effective DOE management, has to diagnose the problems for itself, independently. We need to examine the facts and follow the evidence, identify what works and what doesn't work. And identify a clear path to ensuring safe, secure operations, in interests of taxpayers and national security.

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Mr. STEARNS. With that I recognize the ranking member, Ms. DeGette.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman.

I want to echo the chairman's remarks about this subcommittee having a long bipartisan history of asking tough questions about the safety and security of our Nation's nuclear facilities. I am really pleased we are continuing this work today.

I am glad that members of this subcommittee have the chance to develop a greater understanding of how NNSA is doing securing our nuclear facilities and to learn what can be done to improve the safety and security of those who live or work near those facilities.

I have been on this committee for almost 16 years now, and since that time we have had almost 20 or over 20 hearings on nuclear issues at our national labs. In fact, many of the witnesses here today are regulars in front of this committee. I know the importance of safe and secure nuclear facilities, and I know what is at stake when something falls through the cracks or when the contractors at the sites aren't being carefully watched.

About 10 years ago this subcommittee began the first of a series of hearings on shocking security issues at Los Alamos National Laboratory in New Mexico. Chairman Barton will remember the trip that we took there to look at that facility and to see the shocking lapses that we saw.

What we covered were serious pervasive issues with the management, culture, and the security and safety of the site. We attacked those problems head on, demanding answers and forcing NNSA and DOE to work harder to secure their facilities, and as a result the agency implemented new security procedures and increased oversight of the labs.

But obviously NNSA has more work to do and frankly, this committee has more oversight work to do. In recent weeks we have seen new safety and security issues arise at two locations in the Nation's nuclear weapons complex. Late last month the Los Alamos Lab informed the public that they were investigating an inadvertent spread of a radioactive material, Technetium-99, by employees and contractors at Los Alamos. While DOE indicated that there was no danger of public contamination, approximately a dozen people were exposed, with some tracking of the radioactive material offsite.

This safety lapse comes on the heels of a bizarre but very serious security breach at the Y–12 uranium facility, where an 82-year-old nun—an 82-year-old nun—and two others were able to breach the secure perimeter and vandalize a supposedly secure building containing dangerous nuclear material.

These safety and security incidents show very clearly the need for strong and robust oversight from this committee and others of security issues at our nuclear facilities.

In 2004 and 2005, our willingness to bring serious nuclear safety issues into the public view and to demand that DOE and its labs be held accountable for their actions made a significant difference.

DOE is better than it used to be. There is an entire office dedicated to the health, safety, and security of all DOE facilities, but recent events tell us there is more serious work left to be done.

So, Chairman, that is why it is absolutely necessary for DOE and others to remain a strong oversight role over NNSA facilities. From this committee to the DOE Office of Health, Safety, and Security, to the Inspector General, to GAO, to the Defense Nuclear Facilities Safety Board, to other outside organizations, strong, independent oversight from agencies and groups forces NNSA to take better care of our nuclear facilities. Without good oversight, serious issues, won't be identified and fixed, and the results could be disastrous. I can't think of any reason we would want to decrease our oversight of these facilities, inhibit the ability of oversight to review site actions, or reduce accountability for those responsible for keeping nuclear sites safe.

At a time when terrorists and hostile nations have an ever-increasing pool of physical and cyber weapons in their arsenals, we need to constantly adapt and focus our efforts to protect nuclear facilities. I hope that this hearing will provide us with the information that our colleagues on both sides of the aisle need so we can come together to improve the safety and security of these nuclear facilities. There have just been too many close calls to ignore. Constant vigilance is required. When it comes to our Nation's nuclear facilities, there can never be enough oversight, and that, Mr. Chairman, is why I appreciate you holding this hearing today, and I yield back.

Mr. STEARNS. I thank my colleague, and I recognize the gentleman from Texas, Mr. Barton, for 2 minutes.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Mr. Chairman. When an 82-year-old pacifist nun gets to the inner sanctum of our weapons complex, you cannot say, "Job well done." She is in the audience. Would you please stand up, ma'am? We want to thank you for pointing out some of the problems in our security. While I don't totally agree with your platform that you were espousing, I do thank you for bringing up the inadequacies of our security system, and thank you for being here today.

Mr. Chairman, that young lady there brought a Holy Bible. If she had been a terrorist, the Lord only knows what could have happened. We have had numerous hearings in this subcommittee and full committee on security at our national laboratories and especially our weapons complexes. Apparently that message has still not gone forward about what needs to be done.

What doesn't need to be done, though, is just give the contractors an "atta boy" and a pat on the back. If there is ever a time for more aggressive oversight, this is it, and I applaud you and the ranking subcommittee member, Ms. DeGette, for doing that today, and with that I yield to Mr. Terry the balance of my time.

[The prepared statement of Mr. Barton follows:]

Opening Statement of the Honorable Joe Barton
Subcommittee on Oversight and Investigations, Hearing
"DOE's Nuclear Weapons Complex:
Challenges to Safety, Security, and Taxpayer Stewardship"
September 12, 2012

Thank you Mr. Chairman for holding this hearing. This Committee has been evaluating and ensuring that proper oversight has been maintained over the Department of Energy's (DOE) Nuclear Weapons Complex, including the labs and contractors, for decades.

Unfortunately, as the recent incident at the Y-12 facility shows, the necessary safety and security procedures are either not in place or not being implemented. Either way, I do NOT think that we need to allow for a reduction in independent, internal oversight over these procedures by the DOE by allowing the National Nuclear Security Administration (NNSA) to become more autonomous.

An eighty-two year old nun, who is in the gallery today, was able to penetrate the security at the Y-12 facility. Thank God she was only carrying a copy of the Holy Bible. If that trespasser had been a terrorist, the Lord only knows what he would have brought into the facility.

The labs and contractors who operate the nuclear weapons complex on a day-to-day basis sometimes criticize DOE's oversight over their safety and security procedures stating it is too burdensome and complex. While I will be the first one to concede that the oversight and implementation of NNSA's safety and security procedures are not perfect, I am hesitant to grant these contractors too much flexibility in conducting this oversight on their own without the DOE's continued prominent role at the NNSA.

Over the years, many lessons have been learned and some reforms have been implemented by DOE through the NNSA because of our Committee's continued investigations and oversight of their safety and security programs. Today we will hear from the GAO and the DOE about what needs to be done NOW to ensure that DOE can adequately maintain and conduct independent oversight over its program management and contractors to protect the American people's security and investment.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you.

Mr. STEARNS. The gentlelady can sit down if she likes.

Mr. TERRY. Well, it is—I have to congratulate the contractors of NNSA for accomplishing something based upon their mind-boggling incompetence that hasn't happened here in a while, and that is uniting Republicans and Democrats in our desire for change and reform and more oversight.

The security of U.S. nuclear weapons stockpile cannot be overstated. NNSA was created to keep the DOE from being overstretched, yet it appears that all of their duties were left with contractors where little oversight could or would be done. The last 5 years has seen a significant deterioration in security at the complexes as a result of a decrease in how contractors interact with Federal officials. There must be an understanding that the taxpayer owns these complexes, and they have not gotten their monies' worth.

Failures in both the safety of the laboratories and protection of the weapons themselves has been repeated across the complex, and I believe there is bipartisan support for more oversight. The unprecedented breakdown at Y–12 acted as a test of our security system, and it appears to be an all-out failure. I struggle to understand how the gentlelady that was introduced, an 82-year-old nun, can get through the Fort Knox of nuclear weapons facilities, and what does that say for the complex as a whole?

A major concern of the Y–12 breakdown is the disunity between maintenance and operation contractor and the security personnel. When cameras had been inoperable for 6 months, this tells me that even the most basic level there is no communication within the facility, no oversight, and I understand there is a point where too much oversight can become inefficient and hinder progress in a nuclear—progress in nuclear testing. I believe that we are ultimately here today to do—is find a balance where citizens can be certain that the nuclear materials are pure and scientists continue to work in their most efficient manner.

That is what we are here to do today. Hopefully we can find that balance, and I will yield to the gentlelady from Tennessee.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. I thank the gentleman, and I thank the Chairman for the hearing, again. Indeed, there has been a lot of emphasis and a lot of focus on the July 28, 2012, incident that occurred at the Y–12 facility and the security complex there, and the nun who has stood and been recognized and two other anti-nuclear activists cut through that fence, got into, through the perimeter. They did this seeming to not be noticed. Despite setting off multiple alarms, a delayed response to WSI security personnel gave these protestors time to hang banners, splash blood and paint messages on the facility that contains over 100 tons of weapons-grade, highly enriched uranium. We are appalled. We are appalled.

WSI's slow response, lack of regard for security protocols, along with their check-the-box mentality is completely unacceptable, especially when you take into account the sensitive material they are paid to protect against potential terrorists and nations, states capable of using deadly force during a security breach.

While I understand that security changes have now been made at the Y–12 facility since the incident to ensure that it never happens again, we need to seriously review classified DOE reports from 2010, that the Washington Post reported on this morning, where investigators found, and I am quoting, "Security cameras were inoperable, equipment maintenance was sloppy, and guards were poorly trained." And you knew this 2 years ago? Two years ago.

These criticisms are the very same ones that may have led to the July 28 security breach. Mr. Chairman, the incident demonstrates the great importance of the hearing today. I fully believe it is important for the committee to review the entire working relationship between the NNSA, DOE, and the security contractors across the country at all of our nuclear weapons complexes.

I yield back.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from California, Mr. Waxman, is recognized for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman. This is one of those hearings that we occasionally have in Congress where we say together, Democrats and Republicans, we are shocked. We are shocked that something like this could happen, but we then blame others and don't accept responsibility for ourselves. We have oversight jurisdiction in this committee to be sure this sort of thing doesn't happen, and we know DOE has oversight responsibility, and we expect them to do their job, and you would think that reasonable people would understand that this is a high priority for this country. This is a wake-up call if there ever was one with—this is a quote from the New York Times. "With flashlights and bolt cutters the three pacifists defied barbed wire as well as armed guards, video cameras, and motion sensors."

Well, this security lapse is incredible. We have to do everything in our power to ensure that no one else breaches our security and particularly that none of our enemies view this as an opening, that this will show that this is a weakness that they could exploit.

Well, given this wake-up call you would think members of Congress or any reasonable person would suggest that rolling back security and safety requirements at the nuclear safety—NNSA facilities or promoting reducing oversight of these facility would be outrageous. They wouldn't think of such of thing, yet that is what the Republican Congress did. We have a National Defense Authorization Act, H.R. 4310, that passed the House in May, and that bill weakens protection for our nuclear laboratories and facilities. The bill lowered standards at NNSA sites, and they limited the ability of the Department of Energy and the Defense Nuclear Facilities

Safety Board to address concerns and propose solutions to these problems.

Well, we went along with that, our committee leadership, and the Authorization Bill to lower our oversight for these kinds of breaches. This effort to weaken oversight of nuclear facilities makes absolutely no sense, and this issue most recently of our guest today, an 82-year-old nun, breaching the security at the sensitive Oak Ridge Nuclear Facility and splashing blood on a building that holds enriched uranium before she was arrested, illustrates why we need more oversight and more activity to stop it, not less. Sometimes I think that people are so anxious to save money that they cut off their nose to save their face. We need oversight.

We need to spend the money to do this, and all those people who have been telling us we can't afford this and we can't afford that because we got to give more tax breaks to the upper income ought to think through whether that point of view makes sense. We need multiple layers of strong oversight at our nuclear facilities. We can't simply assume that NNSA and its contractors are making appropriate security and safety decisions.

That reminds me of Hurricane Katrina. Good job. Great job, Brownie, as President Bush said to his appointee who knew nothing about emergency preparedness. He was put in his job because he was a crony of the President at that time. The ability of DOE, this committee, and other oversight experts to ask the tough questions is absolutely vital to holding labs and facilities accountable. We cannot leave nuclear facilities exposed to national disasters or threats from hostile enemies. We have to make sure that those who manage nuclear materials are putting safety and security first.

Now, we are lucky that it was just this very nice nun and others who came to express their point of view that gained access to a secure area next to highly enriched uranium facilities. It could have been much worse. We can all view this as a warning call. We have to look closely at our nuclear facilities. Make sure they are strong, that there are strong, effective oversight mechanisms in place to protect them from danger. We cannot remove or repeal the protections that already are in place.

Mr. Chairman, there is some things we don't agree on, but I think we can all agree that strong oversight of our nuclear arsenal and our nuclear facilities and laboratories is an absolute necessity, and it is time for Congress not just to hold hearings and say, oh, my gosh, what happened, but to realize that when we make cuts to this exact kind of surveillance, we are going to end up paying the consequences for it. Happily the consequences were not as severe as they might have been, but let this be a warning call to all of us.

Yield back my time.

[The prepared statement of Mr. Waxman follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
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Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on "DOE's Nuclear Weapons Complex: Challenges to Safety, Security and Taxpayer Stewardship"
Subcommittee on Oversight and Investigations
September 12, 2012

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This is a wake-up call if there ever was one. This is a quote from the *New York Times*: "With flashlights and bolt cutters, the three pacifists defied barbed wire as well as armed guards, video cameras and motion sensors." This security lapse is incredible.

We have to do everything in our power to ensure no one else breaches our nuclear security barriers and particularly that none of our enemies view this as an opening or a weakness they can exploit.

Given this wake-up call, you would think members of Congress or any reasonable person would suggest that rolling back security and safety requirements at NNSA facilities or promoting reducing oversight of these facilities would be outrageous. They wouldn't think of such a thing. Yet that is what the Republican Congress did.

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This effort to weaken oversight of nuclear facilities makes absolutely no sense. The fact that an 82-year-old nun could breach the security at the sensitive Oak Ridge Nuclear facility and splash blood on a building that holds enriched uranium illustrates why we need more oversight, not less.

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We need multiple layers of strong oversight at our nuclear facilities. We cannot simply assume that NNSA and its contractors are making appropriate security and safety decisions. That reminds me of Hurricane Katrina. "Great job, Brownie," President Bush said to his appointee who knew nothing about emergency preparedness. He was put in his job because he was an old crony of the President at that time.

The ability of DOE, this Committee, and other oversight experts to ask tough questions is absolutely vital to holding labs and facilities accountable. We cannot leave nuclear facilities exposed to national disasters or threats from hostile enemies. We have to make that sure those who manage nuclear materials are putting safety and security first.

We're lucky that it was just this very nice nun and others who came to express their point of view and gained access to a secure area next to a highly enriched uranium facility. It could have been much worse. We can all view this as a warning call. We have to look closely at our nuclear facilities and make sure that there are strong, effective oversight mechanisms in place to protect them from danger. We cannot remove or repeal the protections already in place.

Mr. Chairman, there are some things we don't agree on – but I think we can all agree that strong oversight of our nuclear arsenal and our nuclear facilities and laboratories is an absolute necessity. And it's time for Congress not just to hold hearings and say, "Oh my gosh, what happened?" but to realize that when we make cuts to this exact kind of surveillance, we are going to end up paying the consequences for it. Luckily, the consequences were not as severe as they might have been, but let this be a warning call to all of us.

Mr. STEARNS. The gentleman yields back. I would just say to the gentleman this full committee always puts safety and security first when we are dealing with this very important issue, and it has always been bipartisan.

With that let me welcome our witnesses here this morning, and we have the Honorable Daniel B. Poneman, Deputy Secretary, U.S. Department of Energy, the Honorable Thomas P. D'Agostino, Under Secretary for Nuclear Security and Administrator, Nuclear—National Nuclear Security Administration, U.S. Department of Energy, Mr. Glenn S. Podonsky, Chief Health, Safety, and Security Officer, Department of Energy, the Honorable Gregory H. Friedman, Inspector General, Department of Energy, and Mark E. Gaffigan, Managing Director, Natural Resources and Environmental Team, Government Accountability Office.

As you know, folks, the testimony you are about to give is subject to Title XVIII, Section 1001, of the United States Codes. When holding an investigative hearing like this, this committee has a practice of taking testimony under oath. Do any of you object to testifying under oath? No? OK.

The chair then advises you that under the rules of the House and rules of the committee you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today? No?

In that case, would you please rise and raise your right hand?

[Witnesses sworn.]

Mr. STEARNS. All right, and with that we welcome you, again, and you will give your 5-minute summary of your—Mr. Poneman, we are going to start with you. Go ahead.

STATEMENTS OF DANIEL B. PONEMAN, DEPUTY SECRETARY, DEPARTMENT OF ENERGY, ACCOMPANIED BY THOMAS P. D'AGOSTINO, UNDER SECRETARY FOR NUCLEAR SECURITY AND ADMINISTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY, AND GLENN S. PODONSKY, CHIEF HEALTH, SAFETY, AND SECURITY OFFICER, DEPARTMENT OF ENERGY; MARK E. GAFFIGAN, MANAGING DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT TEAM, GOVERNMENT ACCOUNTABILITY OFFICE; AND GREGORY H. FRIEDMAN, INSPECTOR GENERAL, DEPARTMENT OF ENERGY

STATEMENT OF DANIEL B. PONEMAN

Mr. PONEMAN. Thank you, Mr. Chairman, and in the interest of time I would request that my full statement be submitted——

Mr. STEARNS. By unanimous consent, so ordered.

Mr. PONEMAN. Thank you, sir. Chairman Stearns, Ranking Member DeGette, and distinguished members of the subcommittee, thank you for the invitation to appear before you today to discuss the Department of Energy's oversight of the nuclear weapons complex and the recent security incident at the Y–12 National Security Complex. We appreciate the interest and engagement of this committee and recognize the important oversight role that you fulfill. We also share the committee's commitment to ensure that all of

our offices and operations are delivering on our mission safely, securely, and in a fiscally responsible manner.

Since its creation in 1999, the National Nuclear Security Administration has served as a separately organized entity within the U.S. Department of Energy, entrusted with the execution of our nuclear security missions. Living up to the challenging demands of executing our mission safely, securely, and in a fiscally responsible manner requires daily management through strong, effective, and efficient relationships with our management and operating contractors. Congressional oversight, in conjunction with oversight by the DOE Office of Health, Safety, and Security, our internal independent oversight body, as well as that of the DOE Inspector General, the Defense Nuclear Facilities Safety Board, and the Government Accountability Office contribute to the safety and security of DOE facilities.

As the recent incident at Y–12 demonstrates, the Department has at times fallen short of our own expectations and faces continuing challenges in our goal of continuous improvement. This recent incident, as the Secretary has made abundantly clear, is unacceptable, and we have taken and will continue to take steps not only to identify and correct issues at Y–12 but across the DOE complex.

In response to this incident, we acted swiftly to identify and address the problems that it revealed. These actions either directly or through the contract for the site included the following immediate steps to improve security. In the realm of physical protection, cameras have been repaired and tested, guard patrols increased, security policies have been strengthened, and all personnel have been retrained on security procedures. The number of false and nuisance alarms have been greatly reduced to provide more confidence in the intrusion detection system.

In terms of the professional force onsite, nuclear operations at the site were suspended until retraining and other modifications mentioned above were completed. The entire site workforce was required to undergo additional security training. The former head of security from our Pantex facility moved to Y–12 to lead the effort to reform the security culture at the site.

The Department's Chief of Health, Safety, and Security was directed to deploy a team to Y–12 for an independent inspection. Site managers at all DOE facilities with nuclear material were directed to provide their written assurance that all nuclear facilities are in full compliance with Department security policies and directives as well as internal policies established at the site level. Security functions at the Y–12 site itself had been brought into the management and operations contract to ensure continuity of operations and moving toward an integrated model moving forward.

In the area of leadership changes, the plant manager and chief operating officer at the site retired 12 days after the incident. Six of the top contract executives responsible for security at the Y–12 site had been removed. The leadership of the guard force has been removed, and the guards involved in this incident have been removed or reassigned. The Chief of Defense Nuclear Security for the National Nuclear Security Administration has been reassigned pending the outcome of our internal reviews, and a formal show

cause letter was issued to the contractor that covered the entire scope of operations at Y–12, including security. This is the first step towards potentially terminating the contracts for both the site contractor and its security subcontractor. Past performance including deficiencies and terminations would be considered in the awarding of any future contracts.

In the area of reviews, the HSS Organization that Ms. Podonsky leads was directed to lead near-term assessments of all Category 1 nuclear material sites to identify any systemic issues, enhancing independent oversight performance testing program to incorporate no notice or short notice security testing and conducting comprehensive, independent oversight security inspections at all Category 1 four sites over the next 12 months using the enhanced program of performance testing. An assessment was initiated led by Brigadier General Sandra Finan to review the oversight model itself and the security organizational structure at NNSA headquarters that some of the members have already commented in their opening remarks.

The series of personnel and management changes that I have just briefly outlined were made to provide the highest level of security at the site and across the DOE complex. To manage this transition we have brought some of the best security experts from our enterprise to Y–12 to act quickly to address the security shortcomings at that site.

We are also working to make the structural and cultural changes required to appropriately secure this facility. The Secretary and I intend to send a clear message. Lapses in security will not be tolerated. We will leave no stone unturned to find out what went wrong, and we will take the steps necessary to provide effective security at this site and across our enterprise.

Mr. Chairman and distinguished members of this committee, safety and security are integral to the Department's mission. DOE embraces its obligation to protect the public, the workers, and the environment. We continuously strive to improve upon our safety and security standards and the policies that guide our operations, and we hold line management and ourselves accountable.

Thank you for the opportunity to discuss this vital mission. I look forward to answering your questions both here and in a classified setting as appropriate.

[The prepared statement of Mr. Poneman follows:]

Statement of
Hon. Daniel B. Poneman
Deputy Secretary
U.S. Department of Energy

Before the
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives

September 12, 2012

Chairman Stearns, Ranking Member DeGette, and members of the Subcommittee, thank you for the invitation to appear before you today to discuss the Department of Energy's oversight of the nuclear weapons complex and the recent security incident at the Y-12 National Security Complex (Y-12). We appreciate the interest and engagement of this Committee and recognize the important oversight role that you fulfill. We also share the Committee's commitment to assure that all of our offices and operations are delivering on our mission safely, securely, and in a fiscally responsible manner — from Washington, DC, to California, from every naval reactor to every warhead, from production to clean-up, from deterrence to nonproliferation.

Introduction

Dating back to its origins in the Manhattan Project during World War II, DOE and its predecessor organizations have consistently pursued the development of atomic energy for peaceful and defense purposes, while also safeguarding the health, safety, and security of the public. The Department remains committed to this goal and is deeply informed by its historical legacy, including decades defending the nation through our critical national security responsibilities to sustain a safe, secure, and effective deterrent while combating the proliferation of nuclear weapons to foes and terrorists. We are also committed to fulfill our obligation to clean up the legacy of the Cold War at Environmental Management sites across the country. Thus, nuclear safety and security have been integral to our vital and urgent mission from its inception. We continuously seek to improve our performance in those areas. As the recent incident at Y-12 demonstrates, the Department has at times fallen short of our own expectations and faces continuing challenges in our journey of continuous improvement. This recent incident, as the Secretary has made clear, is unacceptable, and we have taken and will continue to take steps not only to identify and correct issues at Y-12, but across the DOE complex. I will address this incident, and our response, in more detail later in this testimony.

Since its creation in 1999, the National Nuclear Security Administration (NNSA) has served as a separately-organized entity within the U.S. Department of Energy, entrusted with the execution of our national nuclear security missions. Living up to the challenging demands of executing our mission safely, securely, and in a fiscally responsible manner requires daily management through strong, effective, and efficient relationships with our Management and Operating (M&O) contractors. Congressional oversight, in conjunction with oversight by the DOE Office of Health Safety and Security (HSS), our internal, independent oversight body, as well as that of the DOE Inspector General, the Defense Nuclear Facilities Safety Board (DNFSB), and the Government Accountability Office (GAO), contribute to the safety and security of DOE facilities.

The protection of all Department of Energy (DOE) assets — our people, technology, and physical assets, including both nuclear and non-nuclear facilities and other resources — is of integral importance to our mission. The Secretary and I know that, and understand our responsibilities to that mission, in its entirety. Indeed, we have reflected our commitment through our Management Principles, which provide that:

- We will treat our people as our greatest asset;
- We will pursue our mission in a manner that is safe, secure, legally and ethically sound, and fiscally responsible; and
- We will succeed only through teamwork and continuous improvement.

The Secretary has expressed a consistent, unwavering commitment to maintain safe and secure work environments for all Federal and contractor employees. In that spirit, we are determined to assure that the Department's and contractors' operations do not adversely affect the health, safety, or security of workers, the surrounding communities, or the Nation.

DOE's mission includes diverse operations, involving a variety of nuclear materials and processes. We recognize our unique obligations as a self-regulated agency to establish and meet exacting standards for nuclear safety, to maintain robust nuclear safety performance, and to provide rigorous and trustworthy oversight and enforcement of those nuclear safety standards. We must also maintain a safety culture that values and supports those standards, and assures that individuals can freely step forward to voice their concerns related to our safe execution of our mission. Indeed, we encourage them to do so. Only through these actions can we provide adequate protection of our workers, the public, and the environment, while sustaining the public trust and confidence crucial to our ability to fulfill the mission.

To achieve our mission, DOE must strive to excel simultaneously as a self-regulator, as an owner, and as an operator of the facilities in our national security complex. Each of these roles is vital and must be executed with integrity.

Roles and Responsibilities for Nuclear Safety and Security within DOE

The Secretary and I bear ultimate responsibility for nuclear safety and security at DOE facilities. Under our direction, line managers have the authority and the responsibility for establishing,

achieving, and maintaining stringent performance expectations and requirements among all Federal and contractor employees, at DOE labs and other facilities.

Line management is reinforced by the DOE Central Technical Authorities (CTAs), who are responsible for implementing nuclear safety requirements effectively and consistently, providing authoritative nuclear safety guidance, and establishing goals and expectations for subordinate personnel and contractors.

The Department's Office of Health, Safety and Security (HSS) has three discrete functions. First, HSS, in close collaboration with CTAs and line management, is responsible for the development of DOE nuclear safety policy, Federal Rules, Orders, and the associated standards and guidance, as well as for reviewing safety issues complex-wide. The second HSS function is to develop and assist in the implementation of safeguards and security programs that provide protection to national security and other vital national assets entrusted to DOE. The third function is to conduct independent oversight and regulatory enforcement that is independent from line management. On behalf of the Secretary, HSS independently and regularly evaluates contractor and Federal personnel safety and security performance and recommends needed improvements. HSS has broad enforcement authorities in the areas of nuclear safety, worker safety and information security, to include issuance of Notices of Violation and imposition of civil penalties, for contractor violations of Departmental regulations in those areas (for NNSA contractors, HSS recommends enforcement actions to the NNSA Administrator for action). The independence of HSS, which reports directly to the Office of the Secretary, affords HSS the autonomy to exercise its oversight and regulatory role without potential conflicts of interest with those line managers who are subject to its oversight.

By statute, the Defense Nuclear Facilities Safety Board also plays a pivotal role in providing recommendations as well as oversight of safety issues for the Department. The Board makes recommendations to the Secretary of Energy, and the Secretary takes the recommendations fully into account whenever making decisions regarding matters under the Board's jurisdiction.

Safety through Standards, Managing Risk, and Integrated Safety Management

The Department's approach to nuclear safety is founded on a demanding set of standards that capture knowledge and experience in designing, constructing, operating, deactivating, decommissioning, and overseeing nuclear facilities and operations. DOE applies validated national and international standards to the maximum extent possible, because these standards reflect broad input from a large and diverse group of experts. As our management principles state: "We will apply validated standards and rigorous peer review."

Our management principles also require that we "manage risk in fulfilling our mission." This is essential to a robust safety culture, as demonstrated by the 2010 Deepwater Horizon oil spill, which vividly demonstrated the inadequacy of a mere "check-the-box" mentality when it comes to smart decision-making in a complex and hazardous operational environment. Since DOE expects scrupulous compliance with its requirements, managers and workers must recognize

and embrace their personal accountability to meet safety standards, while avoiding a tendency for rote compliance with requirements. In some cases, it may be necessary to raise a hand and ask if another approach could offer a smarter way to assure safety. This questioning attitude must be encouraged.

Integrated Safety Management (ISM) serves as the touchstone of our nuclear safety program. DOE policy requires the Department systematically to integrate safety into management and work practices at all levels so that missions are accomplished while protecting the public, the workers, and the environment.

Contract and Project Management

The Secretary and I are also dedicated to strengthening contract and project management. Indeed, we cannot succeed in advancing our goals for the Department if we fall short in this effort. And, to be clear, safety and security are integral to effective contract management. Safety and security are key performance standards and elements of every contract and extensive oversight is required to ensure stewardship as well as legal and regulatory requirements are met. When we have a safety or security problem, we must fix it, which may lead to increased costs and delays. So building safety and security into the fabric of our programs and our projects from the start and continuously monitoring adherence to safety standards is not just the right thing to do from a moral perspective, and not just the necessary thing to according to our governing laws and regulations,, but it is also the smart thing to do, as stewards of our responsibilities to the Nation and its taxpayers. Our recent experience at the Hanford Waste Treatment Plant bears this view out, and shows that we must pay particular attention to ensure technical and safety issues are promptly reported and resolved, as contract mechanisms and project management actions there may have created circumstances where nuclear safety issues were not appropriately managed.

Pursuant to a request within the Conference Report accompanying Fiscal Year 2012 appropriations legislation, DOE has conducted reviews of five nuclear facility construction projects that each have estimated total project costs in excess of one billion dollars, to determine if they are being managed in a way that could pressure managers or contractors to meet project performance objectives at the expense of adherence to nuclear safety requirements. In that report, submitted in May 2012, we reviewed our acquisition policies and processes to determine if there are systemic issues that might hinder technical and safety issue resolution.

The review found that over the last four years the Department has taken important steps to improve its project management processes, fortifying the foundation for implementing a strong nuclear safety culture at hazardous projects. While the Department has already implemented a number of project management and safety integration improvements, we recognize the importance of proactively seeking additional improvements, such as continuing to strengthen the capability and technical expertise of our federal and contractor staff responsible for project

implementation and execution. We identified several other areas for further improvement, which are detailed in the report.

Y-12 Incursion Incident

On Saturday, July 28, 2012 at 4:30AM three individuals trespassed onto the Y-12 National Security Complex and defaced a building at NNSA's Y-12 National Security Complex in Oak Ridge, Tennessee. The intruders traversed Y-12's Perimeter Intrusion Detection and Assessment System (PIDAS). The intruders' movement was detected, but initially went unchallenged. The Protective Force's delayed response allowed the intruders to vandalize the outer wall of the Highly Enriched Uranium Materials Facility (HEUMF). Following the initial delay, the Y-12 Protective Force detained the intruders. The intruders were later transported offsite.

This incursion and the poor response to it demonstrated a deeply flawed execution of security procedures at Y-12. In response to the incident, we acted swiftly to identify and address the problems it revealed.

These actions — either directly or through the contract for the site — included the following immediate steps to improve security:

- The former head of security from Pantex moved to Y-12 to lead the effort to reform the security culture at the site
- Security functions at the Y-12 site have been brought into the M&O contract to ensure continuity of operations, and moving toward an integrated model going forward;
- The Chief of Defense Nuclear Security for NNSA has been reassigned pending the outcome of a review;
- Six of the top contractor executives responsible for security at the Y-12 site have been removed — including the president and acting president of Wackenhut's Oak Ridge Division;
- The leadership of the guard force has been removed, and the guards involved in this incident have been removed or reassigned;
- The Plant Manager and Chief Operating Officer retired 12 days after the incident;

- Nuclear operations at the site were suspended until re-training and other modifications mentioned above were completed;

- The entire site workforce was required to undergo additional security training;

- Cameras have been repaired and tested, guard patrols increased, security policies have been strengthened, and all personnel have been retrained on security procedures;

- The number of false and nuisance alarms have been greatly reduced, to provide more confidence in the intrusion detection system;

- The Department's Chief of Health, Safety and Security was directed to deploy a team to Y-12 in support of NNSA's efforts;

- Site managers at all DOE facilities with nuclear material were directed to provide their written assurance that all nuclear facilities are in full compliance with Department security policies and directives, as well as internal policies established at the site level;

- A formal "Show Cause Letter" was issued to the contractor that covers the entire scope of operations at Y-12, including security. This is the first step toward potentially terminating the contracts for both and the site contractor and its security subcontractor. Past performance, including deficiencies and terminations, will be considered in the awarding of future contracts;

- A senior federal official was deployed to ensure oversight over contractor security operations;

- An assessment was initiated led by Brigadier General Sandra Finan to review the oversight model and security organizational structure at NNSA headquarters;

- An independent HSS inspection of Y-12 was ordered; and

- HSS was directed to lead near-term assessments of all Category I sites to identify any systemic issues, enhancing Independent Oversight performance testing program to incorporate no-notice or short notice security testing, and conducting comprehensive Independent Oversight security inspections at all Category I sites over the next 12 months, using the enhanced program of performance testing.

The series of personnel and management changes I have just described were made to provide the highest level of security at the site and across the DOE complex. To manage this transition, we have brought some of the best security experts from our enterprise to Y-12 to act quickly to redress the security shortcomings at the site. We are also working to make the structural and cultural changes required to appropriately secure this facility. The Secretary and I intend to

send a clear message: lapses in security will not be tolerated. We will leave no stone unturned to find out what went wrong and will take the steps necessary to provide effective security at this site and across our enterprise.

The initial review of this event has resulted in the identification of multiple issues, collectively indicating that systemic failures and a security culture of complacency directly led to the series of events leading up to the protester incursion. Many of these problems and issues should have been known or corrected by officials at the site, NNSA, and according to the Inspector General, those responsible for approving and implementing the Contractor Assurance System. Chief among these problems include the following:

- Maintenance of critical security systems for the protection of Special Nuclear Materials (SNM) was not conducted as a priority to accomplish mission needs;
- The alarm response expectation of the on-duty Protective Force supervisor were inconsistent with written response plans and post/patrol instructions;
- Protection of SNM competed with other priorities; i.e., new construction projects;
- Appropriate communication protocols were not followed and the response to the intrusion detection alarms were poorly executed; and
- Management oversight of contractor's performance was inadequate.
-
- HSS is revamping its testing protocols for security systems with regard to frequency and notice.

Conclusion

In conclusion, the security of our Nation's nuclear material is a central responsibility of the Department. We must always remain vigilant against error and complacency and have zero tolerance for security breaches at our Nation's most sensitive nuclear facilities. The incident at Y-12 was unacceptable, and it served as an important wake-up call for our entire complex. As a result, NNSA will use this event to review the security at all of our NNSA sites. The Department is taking aggressive actions to ensure the reliability of our nuclear security programs, and will continue to do so.

Mr. Chairman and distinguished members of the Committee, safety and security are integral to the Department's mission. DOE embraces its obligation to protect the public, the workers, and the environment. We continuously strive to improve upon our safety and security standards and policies to guide our operations, and we hold line management — and ourselves — accountable. We seek to foster an open and supportive safety and security culture, where we

actively seek opportunities to enhance the safety and quality of our operations. We depend on our highly-trained workforce to identify errors and opportunities for improvement, and we strive to integrate safety and security at all levels within our organization. We support a vigorous and active advisory, oversight, and enforcement effort through organizations outside of line management, such as HSS and the Defense Nuclear Facilities Safety Board, to provide further assurance that we are protecting the public, the workers, and the environment.

We view these commitments as central to our core mission in support of the President and to the Nation. We feel the weight of the history of so many distinguished Americans whose stewardship of our nuclear enterprise contributed greatly to our success in deterring aggression throughout the Cold War, and continue to defend our freedoms and oppose our potential adversaries to this day.

I would be pleased to answer any questions from the members of the Subcommittee.

Mr. STEARNS. Thank the gentleman.
Mr. Gaffigan, your opening statement.

STATEMENT OF MARK E. GAFFIGAN

Mr. GAFFIGAN. Mr. Chairman, Ranking Member DeGette, members of the subcommittee, good morning. I am pleased to be here to discuss safety, security, and project management oversight of the nuclear security enterprise. In summary, in each of these areas I would like to briefly discuss some of the challenges, the current status and progress in these areas, and some potential paths forward.

Regarding safety, let me start by noting that thankfully through the efforts of DOE, NNSA, and its contractors, the stockpile has remained safe and reliable. However, safety problems do occur, and we have identified them in the past. We have attempted to find the contributing factors to these problems and note that they fall into three key areas; lax attitudes towards safety procedures, inconsistent and unsustained corrective actions, and inadequate oversight.

Currently, DOE has instituted a safety reform effort to review opportunities to streamline requirements and eliminate directives that do not add value to safety. While we applaud DOE's efforts to improve safety requirements, going forward we believe that DOE can make a stronger case in safety reform by ensuring that changes are based on sound analysis of the benefits and costs with good measures of their success.

In addition, future efforts should strive to address areas of concern in quality assurance, safety culture, and independent Federal oversight.

Regarding security, our work in the past has sought to understand past failures that have led to security incidents that have posed the most serious threat to national security and led to shutdowns of facilities like Los Alamos and Lawrence Livermore.

Both GAO and the DOE IG have identified common themes that led to these problems, including an over-reliance on contractor assurance and corrective actions that are not sustained.

As with safety, DOE has instituted a security reform effort to ensure effective, streamlined, and efficient security without excess Federal oversight. While there may be opportunities for more efficient security policy and oversight, our past work has shown that excessive Federal oversight is not the problem.

As demonstrated by the July incident at Y–12, the recent IG report cites and all-to-familiar finding that contractor governance and Federal oversight failed to identify and correct early indicators of multiple system breakdowns that allowed the security breach.

While DOE and NNSA are undertaking many actions in response to this incident, the real challenge going forward is to sustain the security improvements that will invariably be made at NNSA sites. This will require leadership, improved contractor assurance systems, and strong, independent Federal oversight.

Lastly, regarding project management, NNSA continues to experience significant costs and schedule overruns on its major construction projects. To name a few, the National Emission Facility at Lawrence Livermore, a $2.1 billion original estimate grew to

$3.5 billion and was 7 years behind schedule. CMMR, Chemistry and Metallurgy Research Replacement Nuclear Facility at Los Alamos originally projected to cost less than $1 billion. The last estimate before this project was put on hold was $3.7 to $5.8 billion, a six-fold increase with a scheduled delay of 8 to 12 years.

This is why NNSA project management is on GAO's high-risk list. We believe that NNSA has made some progress. We believe they have a strong commitment and top leadership support and have developed and implemented corrective action plans to address these concerns. Going forward we believe NNSA needs to demonstrate its commitment to sufficient people and resources and demonstrate on a sustained basis the ability to complete major construction projects on time and on budget.

However, not to be forgotten, 80 percent of NNSA's budget is devoted to operations and maintenance activities and is not construction related. We recently raised concerns with NNSA's process for planning and prioritizing its work, including the need to more thoroughly review program estimates. We have recommended going forward that they update the requirements for review and cost estimates and reestablish independent analytic capability.

Mr. Chairman, that concludes my opening remarks. I would be happy to address any questions you or the members may have.

[The prepared statement of Mr. Gaffigan follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

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MODERNIZING THE NUCLEAR SECURITY ENTERPRISE

Observations on the National Nuclear Security Administration's Oversight of Safety, Security, and Project Management

Statement of Mark Gaffigan, Managing Director
Natural Resources and Environment

GAO
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Highlights

Highlights of GAO-12-912T, a testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives.

September 12, 2012

MODERNIZING THE NUCLEAR SECURITY ENTERPRISE

Observations on the National Nuclear Security Administration's Oversight of Safety, Security, and Project Management

Why GAO Did This Study

NNSA is responsible for managing nuclear weapon- and nonproliferation-related national security activities in laboratories and other facilities, collectively known as the nuclear security enterprise. Major portions of NNSA's mission are largely carried out by contractors at each site within the enterprise. GAO has designated contract management at NNSA as an area at high risk for fraud, waste, and abuse. Progress has been made, but GAO continues to identify problems such as inadequate oversight of safety and security as well as cost and schedule overruns on major projects. With NNSA proposing to spend tens of billions of dollars to modernize the nuclear security enterprise, it is important to ensure scarce resources are spent in an effective and efficient manner.

This testimony addresses (1) DOE's and NNSA's safety and security oversight and (2) NNSA's project and contract management. It is based on prior GAO reports issued from August 2000 to July 2012.

DOE and NNSA continue to act on the numerous recommendations GAO has made to improve NNSA's management of the nuclear security enterprise. GAO will continue to monitor DOE's and NNSA's implementation of these recommendations.

View GAO-12-912T. For more information, contact Mark Gaffigan at (202) 512-3841 or gaffiganm@gao.gov

What GAO Found

The National Nuclear Security Administration (NNSA), a separately organized agency within the Department of Energy (DOE), has successfully ensured that the nuclear weapons stockpile remains safe and reliable by using state-of-the-art facilities as well as the skills of top scientists. Nevertheless, DOE's and NNSA's ineffective oversight of its contractors has contributed to many safety and security problems. As work carried out at NNSA's sites involves dangerous nuclear materials such as plutonium and highly enriched uranium, stringent safety procedures and security requirements must be observed. In response to numerous serious safety incidents over several decades, DOE has taken steps to improve safety oversight. Recently, laboratory and other officials have raised concerns, however, that federal oversight has become excessive and overly burdensome. To address these concerns, DOE completed a safety and security reform effort to streamline or eliminate many DOE directives. However, GAO reported in April 2012 that the benefits of this reform effort are unclear because DOE did not determine if the original directives were, in fact, burdensome. In addition, the reform effort did not fully address safety concerns GAO and others identified in the areas of quality assurance, safety culture, and federal oversight. For example, the reform effort gives the NNSA site offices, rather than DOE's Office of Independent Oversight staff, responsibility for correcting problems identified in independent assessments. Site office determinations of what issues require more formal contractor responses may be influenced by their responsibility for keeping costs under control and work on schedule. NNSA has also experienced security deficiencies, including numerous incidents involving the compromise or potential compromise of classified information that pose the most serious threat to U.S. national security. NNSA has made progress addressing these deficiencies—including the establishment of an effective headquarters security organization—but a recent and unprecedented security incident at an important NNSA site highlights the challenges the agency faces in fully implementing and sustaining safety and security improvements.

NNSA continues to experience significant cost and schedule overruns on its major projects. For example, NNSA's estimated cost to construct a modern Uranium Processing Facility at NNSA's Y-12 National Security Complex experienced a nearly seven-fold cost increase from between $600 million and $1.1 billion in 2004 to between $4.2 billion and $6.5 billion in 2011. In addition, NNSA's estimated cost to construct a new plutonium research facility at Los Alamos National Laboratory experienced a nearly six-fold increase from between $745 million and $975 million in 2005 to between $3.7 billion and $5.8 billion in 2010. The project has also been delayed between 8 to 12 years from NNSA's original plans. DOE has recently taken a number of actions to improve management of major projects, including those overseen by NNSA. For example, DOE has updated program and project management policies and guidance in an effort to improve the reliability of project cost estimates, better assess project risks, and better ensure project reviews are timely, useful and identify problems early. However, in GAO's view, DOE and NNSA need to (1) commit sufficient people and resources to resolve contract management problems, and (2) demonstrate, on a sustained basis, the ability to complete major projects on time and on budget.

Chairman Stearns, Ranking Member DeGette, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on safety, security, and project management issues related to the nation's nuclear security enterprise. As you know, the National Nuclear Security Administration (NNSA), a separately organized agency within the Department of Energy (DOE), is responsible for managing nuclear weapon- and nonproliferation-related missions in research and development laboratories, production plants, and other facilities—known collectively as the nuclear security enterprise.[1] NNSA manages these national security missions, but work activities are largely carried out by management and operating (M&O) contractors at each site within the nuclear security enterprise. Working under M&O contracts, NNSA contractors apply their scientific, technical, and management expertise at NNSA's government-owned, contractor operated sites.[2]

Questions have been raised about DOE's and NNSA's management of the nuclear security enterprise. For example, we first designated DOE's management of its contracts as an area at high risk of fraud, waste, abuse, and mismanagement in 1990 because of the department's record of inadequate management and oversight of its contractors. During the late 1990's, DOE experienced security problems at the nation's nuclear weapons laboratories and significant cost overruns on major projects. According to a June 1999 report by the President's Foreign Intelligence Advisory Board, DOE's management of the nuclear weapons laboratories, while representing "science at its best," also embodied "security at its worst" because of "organizational disarray, managerial neglect, and...a culture of arrogance." The advisory board urged

[1]Specifically, NNSA manages three national nuclear weapon design laboratories—Lawrence Livermore National Laboratory in California, Los Alamos National Laboratory in New Mexico, and Sandia National Laboratories in New Mexico and California. It also manages four nuclear weapons production plants—the Pantex Plant in Texas, the Y-12 National Security Complex in Tennessee, the Kansas City Plant in Missouri, and the Tritium Extraction Facility at DOE's Savannah River Site in South Carolina. NNSA also manages the Nevada National Security Site, formerly known as the Nevada Test Site.

[2]M&O contracts are agreements under which the government contracts for the operation, maintenance, or support, on its behalf, of a government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more of the major programs of the contracting federal agency. Federal Acquisition Regulation, 48 C.F.R. § 17.601.

Congress to create a new organization that, whether established as an independent agency or a semiautonomous agency within DOE, would have a clear mission, streamlined bureaucracy, and drastically simplified lines of authority and accountability. Responding to the board's recommendations, Congress created NNSA under Title 32 of the National Defense Authorization Act for Fiscal Year 2000—the NNSA Act.[3] The NNSA Act established NNSA as a "separately organized agency" within DOE. The act established the position of DOE Under Secretary for Nuclear Security, who was also designated as the Administrator of NNSA. The Secretary of Energy and the Deputy Secretary of Energy were allowed to establish policy for NNSA and to give direction to NNSA through the Administrator; however, other DOE employees were prohibited from directing the activities of individual NNSA employees. DOE directives remain the primary means to establish, communicate, and institutionalize policies, requirements, responsibilities, and procedures for multiple departmental elements, including NNSA, but the act gives the NNSA Administrator the authority to establish NNSA-specific policies, unless disapproved by the Secretary of Energy. NNSA does this through the issuance of Policy Letters.[4]

NNSA's creation, however, has not yet had the desired effect of fully resolving these long-standing management problems. For example, security incidents, as well as safety issues, contributed to the temporary shut-down of facilities at both Los Alamos and Livermore in 2004 and 2005.[5] More recently, at the Y-12 National Security Complex, three trespassers gained access to the protected security area directly adjacent to one of the nation's most critically important nuclear weapons-related facilities without being interrupted by the security measures in place. According to the Department of Energy's Inspector General, this security breach was unprecedented and represented multiple system failures including failures to maintain critical security equipment, respond properly

[3]Pub. L. No. 106-65, 113 Stat. 512, 953 (1999).

[4]NNSA, *Policy Letters: NNSA Policies, Supplemental Directives, and Business Operating Procedures,* NA SD 251.1 (Washington, D.C.: July 5, 2011).

[5]For additional information on the 2004 temporary shutdown of facilities at Los Alamos, see GAO, *Stand-Down of Los Alamos National Laboratory: Total Costs Uncertain; Almost All Mission-Critical Programs Were Affected but Have Recovered,* GAO-06-83 (Washington, D.C.: Nov. 18, 2005).

to alarms, and understand security protocols.[6] Furthermore, the Inspector General found that contractor governance and federal oversight failed to identify and correct early indications of these multiple system breakdowns. Concerns have also been raised recently by national laboratory and other officials that DOE's and NNSA's oversight of the laboratories' activities has become excessive and that the safety and security requirements the laboratories' are subject to are overly prescriptive and burdensome, which has resulted in a negative effect on the quality of science performed at these laboratories. Regarding major projects, contract management at NNSA and DOE's Office of Environmental Management remain on our high-risk list.[7] In this context, there have been calls in Congress and other organizations to enhance NNSA's ability to operate independently of DOE. For example, the Defense Science Board proposed in 2006 that a completely independent nuclear weapons agency be created.[8] In January 2007, we reported[9] that former senior DOE and NNSA officials with whom we spoke generally did not favor removing NNSA from DOE; we concluded that such drastic change was unnecessary to produce an effective organization and we continue to hold this view.[10]

My testimony today discusses DOE's and NNSA's management of the nuclear security enterprise. It focuses on our reports issued from August 2000 to July 2012 on (1) oversight of safety and security performance in the nuclear security enterprise and (2) project and contract management. Detailed information about scope and methodology can be found in our issued reports. We conducted the performance audit work that supports

[6]DOE Office of Inspector General, *Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex*, DOE/IG-0868, August 2012.

[7]GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: February 2011).

[8]The Defense Science Board provides the Department of Defense with independent advice and recommendations on matters relating to the department's scientific and technical enterprise. See Defense Science Board Task Force, *Nuclear Capabilities* (Washington, D.C.: December 2006).

[9]GAO, *National Nuclear Security Administration: Additional Actions Needed to Improve Management of the Nation's Nuclear Programs*, GAO-07-36, (Washington, D.C.: Jan.19, 2007).

[10]GAO, *Modernizing the Nuclear Security Enterprise: Observations on the Organization and Management of the National Nuclear Security Administration*, GAO-12-867T, (Washington, D.C.: June 27, 2012).

this statement in accordance with generally accepted government auditing standards. Those standards require that we plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DOE is responsible for a diverse set of missions, including nuclear security, energy research, and environmental clean-up. These missions are managed by various organizations within DOE and largely carried out by M&O contractors at DOE sites. According to federal budget data, NNSA is one of the largest organizations in DOE, overseeing nuclear weapons, nuclear nonproliferation, and naval reactors missions at its sites. With a $10.5 billion budget in fiscal year 2011—nearly 40 percent of DOE's total budget—NNSA is responsible for providing the United States with safe, secure, and reliable nuclear weapons in the absence of underground nuclear testing and maintaining core competencies in nuclear weapons science, technology, and engineering. Ensuring a safe and reliable nuclear weapons stockpile is an extraordinarily complicated task and requires state-of-the-art experimental and computing facilities as well as the skills of top scientists in the field. To its credit, NNSA consistently accomplishes this task, as evidenced by the successful assessment of the safety, reliability, and performance of each weapon type in the nuclear stockpile since its creation. In 2011, the administration announced plans to request $88 billion from Congress over the next decade to operate and modernize the nuclear security enterprise.

As discussed above, work activities to support NNSA's national security missions are largely carried out by M&O contractors. This arrangement has historical roots. Since the Manhattan Project produced the first atomic bomb during World War II, NNSA, DOE, and predecessor agencies have depended on the expertise of private firms, universities, and others to carry out research and development work and efficiently operate the facilities necessary for the nation's nuclear defense. Currently, DOE spends 90 percent of its annual budget on M&O contracts, making it the largest non-Department of Defense contracting agency in the government.

DOE generally regulates the safety of its own nuclear facilities and operations at its sites. In contrast, the Nuclear Regulatory Commission (NRC) generally regulates commercial nuclear facilities, and the Occupational Safety and Health Administration (OSHA) generally

regulates worker safety at commercial industrial facilities.[11] However, because of the dangerous nature of work conducted at many sites within the national security enterprise—handling nuclear material such as plutonium, manufacturing high explosives, and various industrial operations that use hazardous chemicals—oversight of the nuclear security enterprise is multifaceted. First, DOE policy states that its contractors are expected to develop and implement an assurance system, or system of management controls that help ensure the department's program mission and activities are executed in an effective, efficient, and safe manner.[12] Through these assurance systems, contractors are required to perform self-assessments as well as identify and correct negative performance trends. Second, NNSA site offices, which are collocated with NNSA sites, oversee the performance of M&O contractors. Site office oversight includes communicating performance expectations to the contractor, reviewing the contractor's assurance system, and conducting contractor performance evaluations. Third, DOE's Office of Health, Safety, and Security—especially its Office of Independent Oversight—conducts periodic appraisals to determine if NNSA officials and contractors are complying with safety and security requirements.[13] Fourth, NNSA receives safety assessments and recommendations from other organizations, most prominently the Defense Nuclear Facilities Safety Board (Safety Board)—an independent executive branch agency created by Congress to assess safety conditions and operations at DOE's defense nuclear facilities.[14] To address public health and safety issues, the Safety Board is authorized to make recommendations to the Secretary of Energy, who may then accept or reject, in whole or in part, the recommendations. If the Secretary of

[11]DOE regulates the safety of most of its own sites with nuclear operations; NRC regulates several DOE nuclear facilities, and OSHA regulates occupational safety at DOE sites that have no nuclear function.

[12]DOE, *Department of Energy Oversight Policy*, DOE P 226.1B (Washington, D.C.: Apr. 25, 2011). Contractor assurance systems are to cover the following operational aspects: (1) environment, safety, and health; (2) safeguards and security; (3) emergency management; and (4) cyber security.

[13]DOE reorganized offices within the Office of Health, Safety, and Security. The Office of Independent Oversight merged with the Office of Enforcement and was renamed the Office of Enforcement and Oversight. For the purposes of this report, we refer to it as the Office of Independent Oversight.

[14]The Safety Board provides oversight for all NNSA sites except the Kansas City Plant, which manufactures non-nuclear components.

Energy accepts the recommendations, the Secretary must prepare an implementation plan. Other organizations that provide assessments and recommendations to NNSA on the management of its sites include DOE's Office of Inspector General, the National Academy of Sciences, and GAO.

Ineffective DOE and NNSA Contractor Oversight Has Contributed to Safety and Security Problems Across the Nuclear Security Enterprise

Work carried out at NNSA's sites may involve plutonium and highly enriched uranium, which are extremely hazardous. For example, exposure to small quantities of plutonium is dangerous to human health, so that even inhaling a few micrograms creates a long-term risk of lung, liver, and bone cancer, and inhaling larger doses can cause immediate lung injuries and death. Also, if not safely contained and managed, plutonium can be unstable and spontaneously ignite under certain conditions. NNSA's sites also conduct a wide range of other activities, including construction and routine maintenance and operation of equipment and facilities that also run the risk of accidents, such as those involving heavy machinery or electrical mishaps. The consequences of such accidents could be less severe than those involving nuclear materials but could also lead to long-term illnesses, injuries, or even deaths among workers or the public.

Long-standing DOE and NNSA management weaknesses have contributed to persistent safety problems at NNSA's national laboratories. In October 2007, we reported that there had been nearly 60 serious accidents or near misses at NNSA's national laboratories since 2000.[15] These incidents included worker exposure to radiation, inhalation of toxic vapors, and electrical shocks. Although no one was killed, many of the accidents caused serious harm to workers or damage to facilities. For example, at Los Alamos in July 2004, an undergraduate student who was not wearing required eye protection was partially blinded in a laser accident. Our review of nearly 100 reports issued since 2000 found that the contributing factors to these safety problems generally fell into three key categories: (1) relatively lax laboratory attitudes toward safety procedures, (2) laboratory inadequacies in identifying and addressing safety problems with appropriate corrective actions, and (3) inadequate oversight by NNSA site offices. DOE's Office of Inspector General has

[15]GAO, *Nuclear and Worker Safety: Actions Needed to Determine the Effectiveness of Safety Improvement Efforts at NNSA's Weapons Laboratories*, GAO-08-73 (Washington, D.C.: Oct. 31, 2007).

also raised concerns about safety oversight by NNSA's site offices. Specifically, the Inspector General reported in June 2011 that NNSA's Livermore Site Office was not sufficiently overseeing the contractor to ensure that corrective actions were fully and effectively implemented for a program designed to limit worker exposure to beryllium, a hazardous metal essential for nuclear operations.[16]

In a March 2010 memorandum, the Deputy Secretary of Energy announced a reform effort to revise DOE's safety and security directives and modify the department's oversight approach to "provide contractors with the flexibility to tailor and implement safety and security programs without excessive federal oversight or overly prescriptive departmental requirements." In the memorandum announcing this effort, the Deputy Secretary noted that burdensome safety requirements were affecting the productivity of work at DOE's sites and that reducing this burden on contractors would lead to measurable productivity improvement. As we reported to this committee in April 2012, this reform effort reduced the number of safety related directives from 80 to 42 by eliminating or combining requirements the department determined were unclear, duplicative, or too prescriptive and by encouraging the use of industry standards.[17] However, the benefits of this reform effort are not clear because DOE did not (1) determine how the original requirements impaired productivity or added costs, (2) assess whether the cost to implement the revised directives would exceed the benefits, or (3) develop performance measures in order to assess how the reform effort will lead to improved productivity or lower costs. Furthermore, DOE's safety reform effort did not fully address safety concerns we and others identified in the areas of quality assurance, safety culture, and federal oversight. In fact, some of the revisions DOE made to its safety-related directives may actually result in weakened independent oversight. For example, while DOE policy notes that independent oversight is integral to help ensure the effectiveness of safety performance, DOE's Office of Independent Oversight staff must now coordinate its assessment activities with NNSA site office management to maximize the use of resources. This arrangement potentially raises concerns about whether

[16]DOE Office of Inspector General, *Implementation of Beryllium Controls at Lawrence Livermore National Laboratory,* DOE/IG-0851 (Washington, D.C.: June 2011).

[17]GAO, *Nuclear Safety: DOE Needs to Determine the Costs and Benefits of Its Safety Reform Effort*, GAO-12-347 (Washington, D.C.: Apr. 20, 2012).

Office of Independent Oversight staff will be sufficiently independent from site office management. In addition, the reform effort gives the NNSA site office, rather than Office of Independent Oversight staff, increased responsibility for managing actions to correct problems identified in independent assessments. Site office determinations of what issues require more formal contractor responses may be influenced by the fact that the site offices also have responsibility for keeping costs under control and work on schedule.

Similar to, but independent of DOE's safety and security reform effort, in February 2011, NNSA initiated its "governance transformation" project, which involved revising the agency's business model to, among other things, place more reliance on contractor's self-oversight through its contractor assurance systems to ensure such things as effective safety and security performance. NNSA's Kansas City Plant has completed implementation of this new business model, and other NNSA sites—such as the Nevada National Security Site and the Y-12 National Security Complex—are currently making changes to implement it as well. In response to the new business model, the Safety Board and the DOE Office of Inspector General have raised concerns about contractor assurance systems. For example, in an April 2011 congressional testimony, the chairman of the Safety Board stated that contractor assurance systems at defense nuclear facilities have not achieved a degree of effectiveness that would warrant a reduction in federal safety oversight and that they are not expected to achieve this effectiveness in the foreseeable future. In May 2012, the DOE Office of Inspector General reported on weaknesses with Sandia National Laboratories' Integrated Safety Management contractor assurance system.[18] Specifically, the report stated, among other things, that (1) contractor self-assessments often failed to identify weaknesses that were subsequently identified by independent assessments and (2) the NNSA site office had not always included goals in the contractor's performance evaluation plans for correcting known weaknesses.

NNSA's work with nuclear materials such as plutonium and highly enriched uranium, nuclear weapons and their components, and large amounts of classified data requires extremely high security. However, we

[18]DOE Office of Inspector General, *Integrated Safety Management at Sandia National Laboratories*, DOE/IG-0866 (Washington, D.C.: May 2012).

have documented cases of poor security performance within the nuclear security enterprise. For example, in January 2008, we reported that Los Alamos experienced 57 reported security incidents involving the compromise or potential compromise of classified information from October 1, 2002, through June 30, 2007, according to DOE records.[19] Thirty-seven (or 65 percent) of these reported incidents posed the most serious threat to U.S. national security interests. Of the remaining 20 incidents, 9 involved the confirmed or suspected unauthorized disclosure of secret information, which posed a significant threat to U.S. national security interests. The remaining 11 reported security incidents involved the confirmed or suspected unauthorized disclosure of confidential information, which posed a threat to DOE security interests. Since that time, NNSA has made progress resolving some security issues. In our January 2007 report, we made 21 recommendations to the Secretary of Energy and the Administrator of NNSA that were intended to correct deficiencies in five areas, including security.[20] Our security-related recommendations included having NNSA implement a professional development program for security staff to ensure the completion of needed training, develop a framework to evaluate results from security reviews and guide security improvements, and establish formal mechanisms for sharing and implementing lessons learned across the nuclear security enterprise. DOE and NNSA have taken important steps to address most of these recommendations. Specifically, NNSA's establishment of an effective headquarters security organization has made significant progress implementing these recommendations by performing security reviews, developing security performance measures, and instituting a security lessons-learned center.

Nevertheless, as the recent and unprecedented security incident at Y-12 highlights, NNSA struggles to fully implement and sustain safety and security improvements while facing security challenges. In June 2008, we reported that significant security problems at Los Alamos had received insufficient attention.[21] The laboratory had over two dozen initiatives

[19]GAO, *Los Alamos National Laboratory: Information on Security of Classified Data, Nuclear Material Controls, Nuclear and Worker Safety, and Project Management Weaknesses*, GAO-08-173R (Washington, D.C.: Jan. 10, 2008).

[20]GAO-07-36

[21]GAO, *Los Alamos National Laboratory: Long-Term Strategies Needed to Improve Security and Management Oversight*, GAO-08-694 (Washington, D.C.: June 13, 2008).

under way that were principally aimed at reducing, consolidating, and better protecting classified resources. However, the laboratory had not implemented complete security solutions to address either classified parts storage in unapproved storage containers or weaknesses in its process for ensuring that actions taken to correct security deficiencies were completed. Furthermore, Los Alamos had implemented initiatives that addressed a number of previously identified security concerns but had not developed the long-term strategic framework necessary to ensure that its fixes would be sustained over time. In March 2009, we reported on numerous and wide-ranging security deficiencies at Livermore, particularly in the ability of Livermore's protective forces to ensure the protection of special nuclear material and the laboratory's protection and control of classified matter.[22] Livermore's physical security systems, such as alarms and sensors, and its security program planning and assurance activities were also identified as areas needing improvement. Weaknesses in Livermore's contractor self-assessment program and the Livermore Site Office's oversight of the contractor contributed to these security deficiencies at the laboratory. According to one DOE official, both programs were "broken" and missed even the "low-hanging fruit." The laboratory took corrective action to address these deficiencies, but we noted that better oversight was needed to ensure that security improvements were fully implemented and sustained. Following the security incident at Y-12, which resulted in a 2 week suspension of nuclear operations at the site, DOE and NNSA have taken a number of actions to address both site-specific and enterprise-wide security issues. For example, DOE and NNSA: (1) required the entire site workforce to undergo additional security training; (2) increased the number of protective force patrols that review alarm assessments; and (3) tasked a senior agency official to conduct an assessment of NNSA's enterprise-wide security oversight model.

[22]GAO, *Nuclear Security: Better Oversight Needed to Ensure That Security Improvements at Lawrence Livermore National Laboratory Are Fully Implemented and Sustained*, GAO-09-321 (Washington, D.C.: Mar. 16, 2009).

NNSA Needs to Make Further Improvements to Its Management of Major Projects and Contracts

A basic tenet of effective management is the ability to complete projects on time and within budget. For more than a decade and in numerous reports, we have found that NNSA has continued to experience significant cost and schedule overruns on its major projects, principally because of ineffective oversight and poor contractor management. Specifically:

- In August 2000, we reported that poor management and oversight of the National Ignition Facility construction project at Lawrence Livermore National Laboratory had increased the facility's cost by $1 billion and delayed its scheduled completion date by 6 years.[23] Among the many causes for the cost overruns or schedule delays, DOE and Livermore officials responsible for managing or overseeing the stadium-sized laser facility's construction did not plan for the technically complex assembly and installation of the facility's 192 laser beams. They also did not use independent review committees effectively to help identify and correct issues before they turned into costly problems. Similarly, in April 2010, we reported that weak management by DOE and NNSA had allowed the cost, schedule, and scope of ignition-related activities at the National Ignition Facility to increase substantially.[24] Since 2005, ignition-related costs have increased by around 25 percent—from $1.6 billion in 2005 to over $2 billion in 2010—and the planned completion date for these activities has slipped from the end of fiscal year 2011 to the end of fiscal year 2012 or beyond.

- We have issued several reports on the technical issues, cost increases, and schedule delays associated with NNSA's efforts to extend, through refurbishment, the operational lives of nuclear weapons in the stockpile. For example, in December 2000, we reported that refurbishment of the W87 strategic warhead had experienced significant design and production problems that increased its refurbishment costs by over $300 million and caused

[23]GAO, *National Ignition Facility: Management and Oversight Failures Caused Major Cost Overruns and Schedule Delays*, GAO/RCED-00-271 (Washington, D.C.: Aug. 8, 2000).

[24]Ignition-related activities consist of the efforts separate from the facility's construction that have been undertaken to prepare for the first attempt at ignition—the extremely intense pressures and temperatures that simulate on a small scale the thermonuclear conditions created in nuclear explosions. See GAO, *Nuclear Weapons: Actions Needed to Address Scientific and Technical Challenges and Management Weaknesses at the National Ignition Facility*, GAO-10-488 (Washington, D.C.: Apr. 8, 2010).

schedule delays of about 2 years.[25] Similarly, in March 2009, we reported that NNSA and the Department of Defense had not effectively managed cost, schedule, and technical risks for the B61 nuclear bomb and the W76 nuclear warhead refurbishments.[26] For the B61 life extension program, NNSA was only able to stay on schedule by significantly reducing the number of weapons undergoing refurbishment and abandoning some refurbishment objectives. In the case of the W76 nuclear warhead, NNSA experienced a 1-year delay and an unexpected cost increase of nearly $70 million as a result of its ineffective management of one of the highest risks of the program—manufacturing a key material known as Fogbank, which NNSA needed to refurbish the warhead but did not have the knowledge, expertise, or facilities to manufacture.

- In October 2009, we reported on shortcomings in NNSA's oversight of the planned relocation of its Kansas City Plant to a new, more modern facility.[27] Rather than construct a new facility itself, NNSA chose to have a private developer build it. NNSA would then lease the building through the General Services Administration for a period of 20 years. However, when choosing to lease rather than construct a new facility itself, NNSA allowed the Kansas City Plant to limit its cost analysis to a 20-year life cycle that has no relationship with known requirements of the nuclear weapons stockpile or the useful life of a production facility that is properly maintained. As a result, NNSA's financing decisions were not as fully informed and transparent as they could have been. If the Kansas City Plant had quantified potential cost savings to be realized over the longer useful life of the facility, NNSA might have made a different decision as to whether to lease or construct a new facility itself.

- We reported in March 2010 that NNSA's plutonium disposition program was behind schedule in establishing a capability to produce the plutonium feedstock necessary to operate its Mixed-Oxide Fuel

[25]GAO, *Nuclear Weapons: Improved Management Needed to Implement Stockpile Stewardship Program Effectively*, GAO-01-48, (Washington, D.C.: Dec. 14, 2000).

[26]GAO, *Nuclear Weapons: NNSA and DOD Need to More Effectively Manage the Stockpile Life Extension Program*, GAO-09-385 (Washington, D.C.: Mar. 2, 2009).

[27]GAO, *Nuclear Weapons: National Nuclear Security Administration Needs to Better Manage Risks Associated with Modernization of Its Kansas City Plant*, GAO-10-115 (Washington, D.C.: Oct. 23, 2009).

Fabrication Facility currently being constructed at DOE's Savannah River Site in South Carolina.[28] In addition, NNSA had not sufficiently assessed alternatives to producing plutonium feedstock and had only identified one potential customer for the mixed-oxide fuel the facility would produce. In its fiscal year 2012 budget justification to Congress, NNSA reported that it did not have a construction cost baseline for the facility needed to produce the plutonium feedstock for the mixed-oxide fuel, even though Congress had already appropriated over $270 million through fiscal year 2009 and additional appropriation requests totaling almost $2 billion were planned through fiscal year 2016. NNSA stated in its budget justification that it was considering options for producing necessary plutonium feedstock without constructing a new facility.

- In November 2010, we reported that NNSA's plans to construct a modern Uranium Processing Facility (UPF) at its Y-12 National Security Complex in Oak Ridge, Tennessee, had experienced significant cost increases.[29] Originally estimated in 2004 to cost from $600 million to $1.1 billion, NNSA revised its cost estimate in 2007, more than doubling the estimated cost to construct the facility to between $1.4 billion and $3.5 billion. Costs have continued to rise since we issued our report. As of September 2011, NNSA estimated that the facility would cost from $4.2 billion to $6.5 billion to construct—a nearly seven-fold cost increase from the original estimate.

- We reported in March 2012 on NNSA's plans to construct the Chemistry and Metallurgy Research Replacement Nuclear Facility (CMRR) at Los Alamos, which is intended to modernize the laboratory's capability to analyze and store plutonium.[30] Specifically, we found that in 2005, when DOE developed initial plans for CMRR, it

[28]GAO, *Nuclear Nonproliferation: DOE Needs to Address Uncertainties with and Strengthen Independent Safety Oversight of Its Plutonium Disposition Program*, GAO-10-378 (Washington, D.C.: Mar. 26, 2010). Mixed-oxide fuel contains plutonium blended with natural uranium, reprocessed uranium, or depleted uranium.

[29]GAO, *Nuclear Weapons: National Nuclear Security Administration's Plans for Its Uranium Processing Facility Should Better Reflect Funding Estimates and Technology Readiness*, GAO-11-103 (Washington, D.C.: Nov. 19, 2010).

[30]GAO, *Modernizing the Nuclear Security Enterprise: New Plutonium Research Facility at Los Alamos May Not Meet All Mission Needs*, GAO-12-337 (Washington, D.C.: Mar. 26, 2012).

estimated that the project would cost from $745 million to $975 million and would be completed between 2013 and 2017. In April 2010, NNSA estimated that CMRR will cost between $3.7 and $5.8 billion—a nearly six-fold increase from the initial estimate—and that construction will be complete by 2020—a 3- to 7-year delay. In February 2012, after we had provided NNSA with a draft of our report for its comments, NNSA announced that it had decided to defer CMRR construction by at least an additional 5 years, bringing the total delay from NNSA's original plans to 8 to 12 years. Furthermore, even though CMRR as designed may be large enough to meet nuclear weapon stockpile requirements, it is unclear if the facility will be large enough to accommodate DOE's nonweapons activities that involve plutonium—such as nonproliferation, nuclear forensics, and nuclear counterterrorism programs—because the department has not comprehensively studied their long-term research and storage needs.

- In July 2012, we identified concerns with NNSA's framework for planning, prioritizing, funding, and evaluating its program activities.[31] For example, we found that NNSA's formal process for assessing budget estimates is not sufficiently thorough to ensure that the agency's budget is credible and reliable because (1) it is limited to assessing the processes used to develop budget estimates rather than the accuracy of the resulting estimates and, (2) it is conducted for a small portion of NNSA's budget—approximately 1.5 percent in 2011. Furthermore, NNSA lacks an independent analysis unit to verify cost estimates and review proposals for program activities, as called for by prior DOE Inspector General and GAO recommendations.[32]

As discussed above, NNSA remains on our high-risk list as vulnerable to fraud, waste, abuse, and mismanagement. DOE has recently taken a number of actions to improve management of major projects, including those overseen by NNSA. For example, DOE has updated program and project management policies and guidance in an effort to improve the reliability of project cost estimates, better assess project risks, and better

[31]GAO, *Modernizing the Nuclear Security Enterprise: NNSA's Review of Budget Estimates and Decisions on Resource Trade-offs Need Strengthening*, GAO-12-806 (Washington, D.C., July 31, 2012).

[32]DOE Office of Inspector General, *National Nuclear Security Administration's Planning, Programming, Budgeting, and Evaluation Process*, DOE/IG-0614, (Washington, D.C.: August 2003) and GAO-07-36.

ensure project reviews that are timely and useful and identify problems early. These are positive steps, and we will continue to monitor and evaluate DOE's and NNSA's implementation of these actions. However, DOE needs to ensure that NNSA has the capacity—that is, the people and other resources—to resolve its project management difficulties so that its major projects do not continue to experience major cost overruns and schedule delays.

In conclusion, the critical nature of the work NNSA performs and the high-hazard operations it conducts—often involving extremely hazardous materials, such as plutonium and highly enriched uranium, that must be stored under high security to protect them from theft—requires careful oversight and stringent safety and security requirements. With regard to the concerns that DOE's and NNSA's oversight of the laboratories' activities have become excessive and that safety and security requirements are overly prescriptive and burdensome, we agree that excessive oversight and micromanagement of contractors' activities is not an efficient use of scarce federal resources. Nevertheless, in our view, the problems we continue to identify in the nuclear security enterprise are not caused by excessive oversight, but instead result from ineffective oversight. NNSA has made significant progress—including the establishment of an effective headquarters security organization—resolving many of the safety and security weaknesses we have identified, but, as demonstrated by the recent security incident at Y-12, the agency faces challenges in ensuring these improvements are fully implemented and sustained.

Regarding management of major projects and contracts, NNSA has, to its credit, successfully ensured that the nuclear weapons stockpile remains safe and reliable in the absence of underground nuclear testing, accomplishing this complicated task by using state-of-the-art facilities, as well as the skills of top scientists. NNSA faces a complex task in planning, budgeting, and ensuring the execution of interconnected activities across the nuclear security enterprise. Among other things, maintaining government-owned facilities that were constructed more than 50 years ago and ensuring M&O contractors are sustaining critical human capital skills that are highly technical in nature are difficult undertakings. Over the past decade, we have made numerous recommendations to DOE and NNSA to improve their management practices. DOE and NNSA have acted on many of these recommendations and have made considerable progress. Nevertheless, enough significant management problems remain to prompt some to call for removing NNSA from DOE and either moving it to another department or establishing it as a separate agency.

However, we do not believe that such drastic changes are necessary. Importantly, we are uncertain whether such significant organizational changes to increase NNSA's independence would produce the desired effect of creating a modern, responsive, effective, and efficient nuclear security enterprise. Nevertheless, DOE and NNSA must continue their efforts to (1) commit sufficient people and resources to resolve project and contract management problems and (2) demonstrate, on a sustained basis, the ability to complete major projects on time and on budget. As NNSA is proposing to spend decades and tens of billions of dollars to modernize the nuclear security enterprise, Congress and the American taxpayer have the right to know whether investments made in the nuclear security enterprise are worth the cost.

Chairman Stearns, Ranking Member DeGette, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-3841 or gaffiganm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Allison Bawden, Ryan T. Coles, and Jonathan Gill, Assistant Directors; and Patrick Bernard, Senior Analyst.

A special acknowledgement is due to Gene Aloise, who recently retired after 38 years of federal service. For the past 10 years, Gene was GAO's senior executive responsible for issues related to United States and international nuclear security and cleanup. The assessments of federal initiatives conducted under his direction on a wide range of nuclear issues, including efforts to modernize the U.S. nuclear weapons complex, hold the Department of Energy accountable for significant cost and schedule overruns on major projects, protecting the nation from the dangers of nuclear proliferation, and cleaning up the legacy of the United States' production of nuclear weapons during the Cold War, have provided the Congress with valuable information for making informed policy decisions on and providing oversight of these very complex and controversial issues. We wish Gene well in his new position as Deputy Inspector General at the Special Inspector General for Afghanistan Reconstruction (SIGAR).

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Mr. STEARNS. I thank the gentleman, and Mr. Friedman, welcome, again, for your opening statement.

STATEMENT OF GREGORY H. FRIEDMAN

Mr. FRIEDMAN. Chairman Stearns and Ranking Member DeGette and members of the subcommittee, I am pleased to be here at your request to testify on matters relating to the oversight of the nuclear weapons complex by the Department of Energy and the National Nuclear Security Administration.

With an annual budget of nearly $12 billion, NNSA——

Mr. STEARNS. I am just going to ask you to move your mic a little closer if you don't mind.

Mr. FRIEDMAN. Certainly. NNSA is charged with critically important missions relating to nuclear weapons refurbishment and storage, nuclear non-proliferation, and science and technology. The directors of NNSA's contractor operate at national security laboratories Los Alamos, Lawrence Livermore, and Sandia, as well as other independent review groups have expressed concern with the Department and NNSA oversight of contractors is overly burdensome. They recommended changes in the model, with the most radial being to take NNSA outside of the Department's purview entirely.

We recognize and I think everybody should that it is difficult to strike precisely the right balance between the contractors' desire to operate without undue oversight and the government's need to ensure the taxpayers' interests and the operation of the laboratories and the other facilities is protected. We agree that oversight should not be overly burdensome. It should be targeted, cost effective, risk based, and it should encourage intelligence risk tolerance.

However, at the end of the day responsible Federal officials have an obligation to a higher authority, the U.S. taxpayers, to ensure that the terms and conditions of the various NNSA contracts are satisfied, the national security mission goals are met, and that the weapons complex is operated in an effective, efficient, and safe and secure manner. Our reviews have identified numerous opportunities to advance various aspects of NNSA's functions, including its management of the national security laboratories and other weapons complex facilities.

Most prominently, we recently issues a special inquiry report on the security breaches, security breach, excuse me, at the Y–12 national security complex at Oak Ridge, Tennessee. You heard about that previously from prior speakers. In the Y–12 report we cited delayed and inept response, inoperable security equipment, excessive use of compensatory measures, resource constraints, and most importantly as it pertains to the purpose of this hearing, contract administration issues.

We have no evidence, empirical or otherwise, to suggest that unreasonable Department and NNSA oversight has had a causal relationship to the problems we identified in our reviews. In fact, in many cases, the Y–12 matter being a prime example, we found the Department and NNSA had not been as thorough as we felt necessary in exercising the contract administration responsibilities.

Further, NNSA is currently dealing with a number of cost, schedule, and mission issues concerning major projects, including over

$13 billion in capital investments in the projects that Mr. Gaffigan just referred to. With projects of such magnitude and complexity, Federal officials have a special responsibility to ensure that taxpayer dollars are well spent and the national security is protected.

Further, the unique contractor indemnification provision of NNSA's Management Operating Contracts place special burdens on the Federal management team. In short, the Department bears ultimate financial responsibility for essentially all contractor activities which are nuclear related. In my judgment this argues for a robust contractor oversight.

There are a number of threshold questions regarding oversight, the oversight model which have yet to have been answered from my perspective. For example, to what extent does current oversight hinder mission accomplishment? How would a new model lead to tangible improvements in scientific and technological outcomes? And how would a new model improve accountability and transparency?

In our view any decision to modify the NNSA Weapons Complex Governance Model should ensure that first, historic safety and security concerns regarding weapons complex management are treated as a priority. Second, the synergies that result from numerous collaborations between the national security laboratories and the Department's other laboratories and energy functions are not impeded. Third, expectations of the contractors are as clear and precise as possible. Fourth, that metrics are in place to provide a sound basis for evaluating contractor and program performance. Fifth, that any new operating formulation is lean and mean, reflecting current budget realities, and finally, that contractors have in place an effective internal governance system.

We support continuous improvement, but a scalpel rather than a cleaver approach ought to guide efforts to find better NNSA contractor oversight mechanisms. The problems with the status quo need to be well-defined, all remedies cost effective, and the core mission maintained. The work of the NNSA and its weapons complex is too important to do anything less.

This concludes my testimony, and I look forward to your questions.

[The prepared statement of Mr. Friedman follows:]

Statement of Gregory H. Friedman

Inspector General

U.S. Department of Energy

Before the

Subcommittee on Oversight and Investigations

Committee on Energy and Commerce

U.S. House of Representatives

"DOE's Nuclear Weapons Complex: Challenges to Safety, Security, and Taxpayer Stewardship"

FOR RELEASE ON DELIVERY
10:00 AM
September 12, 2012

Mr. Chairman and Members of the Subcommittee, I am pleased to be here at your request to testify on matters relating to the Department of Energy's oversight of the nuclear weapons complex.[1]

The National Nuclear Security Administration (NNSA) was established under the National Defense Authorization Act of 2000 as a separately organized agency within the Department of Energy. This action was intended to allow NNSA to concentrate on its defense-related mission, free from other Departmental operations. Its creation was, in large measure, a reaction to highly publicized concerns about the management of the weapons complex.

With an annual budget of nearly $12 billion, NNSA is charged with critically important national security missions relating to nuclear weapons refurbishment and storage, nuclear non-proliferation, and science and technology research. NNSA manages a number of major facilities, including three prominent national security laboratories: Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories. In addition, major weapons-related efforts are carried out at Department facilities, including the Y-12 National Security Complex, the Pantex Plant, and the Kansas City Plant. Using a business model initiated in the late 1940's as part of the Manhattan Project, virtually all of NNSA's operations are conducted by contract using a fairly unique management and operating contractor arrangement, which includes special provisions regarding contractor indemnification (Price-Anderson Amendments Act of 1988).

[1] The Office of Inspector General uses the term "oversight" in this testimony; however, we prefer to make the distinction between "oversight," clearly the prerogative of the Congress, for example, and "contract administration," which describes the Department of Energy's responsibilities to administer the laboratory contracts in all respects.

The Los Alamos, Livermore, and Sandia laboratories are designated as Federally Funded Research and Development Centers (FFRDC). In addition to their primary weapons responsibilities, over the years they have advanced research and development in a number of disciplines. These include discoveries involving medical diagnostics and treatments, supercomputing, and combating terrorism. The national laboratories have a recognized track record of achievements that includes a significant number of prestigious awards, including 12 R&D 100 Awards in 2012, which recognize and celebrate the top 100 technology products of the year. Other vital NNSA facilities focus on weapons construction, testing, dismantlement, and inventories of nuclear and non-nuclear weapon materials and components.

In spite of notable successes, the directors of the national security laboratories and other independent review groups have expressed concern that the Department and NNSA have micromanaged the laboratories, thereby, adversely impacting the effectiveness and efficiency of their operations. The heart of these assertions is that oversight of contractors has been excessive, overly prescriptive, and burdensome. The intensity of oversight in the areas of safety and security was cited as being of special concern. The findings of one external review, apparently based, at least in part, on the testimony of current and former contractor officials and Federal executives, used terms like "dysfunctional" and "a lack of trust" to describe the working relationship among the Department, NNSA, and the national laboratories that manage and operate elements of the nuclear weapons complex. The laboratory directors and others have

recommended changes in the relationship between the parties, with the most radical recommendation being to take NNSA outside of the Department's purview entirely.[2]

Office of Inspector General Activities

Given that NNSA operations represent nearly 40 percent of the Department's budget and include some of the Department's most sensitive, high-profile missions, the Office of Inspector General (OIG) regards NNSA activities as a priority. Thus, the OIG has developed an extensive body of work identifying opportunities to improve the effectiveness, economy, and efficiency of various aspects of NNSA's functions, including its management of the national security laboratories and other weapons facilities. I want to provide the Subcommittee with a brief synopsis of several recent reports concerning issues across the weapons complex. Most prominently, the OIG recently issued a special inquiry report on the security breach at the Y-12 National Security Complex in Oak Ridge, Tennessee.

Security Breach at the Y-12 National Security Complex: In response to the July 28, 2012, security breach at NNSA's Y-12 National Security Complex, the Office of Inspector General effectuated the arrest of the alleged trespassers and is currently working with the U.S. Attorney's Office on this matter. Separately, on August 29, 2012, we issued a report on the Y-12 security incident, which identified multiple system failures on several levels. We found troubling breakdowns in responding to alarms, failures to maintain critical security equipment, over reliance on compensatory measures, misunderstanding of security protocols, poor

[2] In contrast, our November 2011 Department of Energy Management Challenges Report recommended that the Department consider consolidating a number of currently separate Department of Energy and NNSA functions.

communications, and weaknesses in contract and resource management. Especially important in light of the purpose of today's hearing, contractor governance and Federal oversight failed to identify and correct early indicators of the breakdowns. These issues directly contributed to an atmosphere in which trespassers could gain access to the protected security area directly adjacent to one of the Nation's most critically important and highly secured weapons-related facilities (*Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex,* DOE/IG-0868, available at: http://energy.gov/sites/prod/files/IG-0868_0.pdf).

Management of Worker Disability and Return to Work Programs: In June 2012, we reported that NNSA contractors had not always managed their worker disability programs effectively, efficiently, and in the Department's best interest. For example, we found that in purchasing its guaranteed cost workers' compensation insurance, Livermore incurred and charged NNSA $1.26 million in insurance broker compensation, even though NNSA's contracting officer had specifically advised Livermore, in writing, that broker fees would not be reimbursable. We noted that by improving oversight of contractor disability programs, NNSA could save more than $3.3 million annually in contractor disability compensation programs. (*The National Nuclear Security Administration Contractors' Disability Compensation and Return-to-Work Programs,* DOE/IG-0867, available at: http://energy.gov/sites/prod/files/DOE-IG-0867.pdf).

Worker Safety in the Nuclear Weapons Complex: We reported in May 2012 that Sandia had not fully addressed the root causes of long-standing weaknesses in implementing its Integrated

Safety Management (ISM) system – a system designed to prevent and/or reduce occupational injuries, illnesses, and accidents. We determined that Sandia had not always effectively managed line supervisors by holding them accountable for implementing ISM. Sandia's problems in implementing ISM were exacerbated by NNSA's failure to establish effective goals to monitor and/or evaluate the efficacy of Sandia's corrective actions. (*Integrated Safety Management at Sandia National Laboratories,* DOE/IG-0866, available at: http://energy.gov/sites/prod/files/DOE%20IG-0866.pdf).

The OIG has also issued a number of reports on contractor controls over beryllium – a metal essential to nuclear operations, but one that can cause serious disease among those exposed to it. While the Department established a prevention program to reduce exposures, we concluded that ineffective oversight allowed the failure to identify and alert workers to the presence of beryllium in certain areas to persist at Livermore. We also found weaknesses in NNSA's Y-12 National Security Complex Beryllium Prevention Program. Potentially endangering workers, these weaknesses were caused, at least in part, by a lack of Department standards over surface contamination found outside of confirmed beryllium areas. (*Implementation of Beryllium Controls at Lawrence Livermore National Laboratory,* DOE/IG-0851, available at: http://energy.gov/sites/prod/files/igprod/documents/IG-0851.pdf; and *Beryllium Surface Contamination at the Y-12 National Security Complex,* DOE/IG-0783, available at: http://energy.gov/sites/prod/files/igprod/documents/IG-0783.pdf).

Information Technology Data Centers: We found that NNSA had not fully satisfied its responsibilities under a government-wide effort to consolidate data centers. The data centers use

massive amounts of energy and are very costly to operate. In May 2012, we reported that NNSA lacked visibility over the number of data centers it funded at contractor sites and that it had not fully developed and implemented plans to identify and consolidate data centers. At just the four sites we visited, NNSA contractors maintained data centers occupying 160,000 square feet, 14 percent of which was unused or not used for its intended purpose. A lack of coordination among and between organizations also contributed to poor progress in minimizing duplicative infrastructure. As a result, NNSA missed opportunities to consolidate data centers and reduce overall costs and energy use. (*Efforts by the Department of Energy to Ensure Energy-Efficient Management of its Data Centers,* DOE/IG-0865, available at: http://energy.gov/sites/prod/files/IG-0865.pdf).

National Security Information: Problems with the management of national security information also persisted because of insufficient performance monitoring by Department and NNSA officials. In April 2011, we found that the risk of compromise of national security information at Livermore could be reduced by improving security planning and policies. We found that NNSA had not always performed sufficient monitoring of activities involving national security information at Livermore. (*Security Planning for National Security Information Systems at Lawrence Livermore National Laboratory*, OAS-M-11-03, available at: http://energy.gov/sites/prod/files/igprod/documents/OAS-M-11-03.pdf).

Contract Oversight Principles

The issues that have been raised most recently concerning contract oversight in the NNSA laboratory management model are not new. They have been topics of discussion for many years.

We recognize that it is difficult to strike the right balance between the contractors' stated desire to use their management expertise without undue oversight and the Government's need to proactively ensure that the taxpayers' interests in the operation of the laboratories is protected. In seeking the necessary equilibrium, we believe that there are several basic principles upon which virtually all parties would likely agree:

1. Government oversight should be neither overly prescriptive nor unnecessarily burdensome;
2. Oversight mechanisms should be targeted to avoid duplication, redundancy, and overlap;
3. Oversight efforts should be cost-effective and risk-based; and
4. The oversight regime should encourage intelligent risk tolerance, which is especially important in a research and development setting.

This having been said, a primary principle remains: The Department, NNSA, and all responsible Federal representatives have an overriding obligation to U.S. taxpayers to ensure that the terms and conditions of the various NNSA contracts are satisfied in all material respects, national security mission goals are met, and the weapons complex is operated in an effective, efficient, safe, and secure manner. These are not insignificant tasks, especially given the fact that the contracts for the three NNSA laboratories alone are valued at about $5 billion per year. Moreover, NNSA missions and functions are highly complex and include a number of inherently risky operations.

Observations

The Office of Inspector General devotes a substantial portion of its time and resources to matters relating to NNSA operations and, by definition, the administration of NNSA's prime contracts. A routine part of our audit and inspection tradecraft is to conduct root cause analyses of the concerns we have identified. As it relates to the subject of this hearing, we have developed no evidence, empirical or otherwise, to suggest that what some characterize as overly burdensome oversight on the part of the Department and/or NNSA has had a causal relationship to the problems identified in our reviews. In fact, in many cases, we found that the Department and NNSA have not been as thorough as we felt was necessary in exercising their contract administration responsibilities. The most recent incident at Y-12 makes this point. Despite recent positive reports provided by the contractor and endorsements from Federal site managers, there were actually a number of known security-related problems at Y-12. Given the exposure to risk in this area and the reality of the recent situation, we concluded that more intensive, effective oversight was and is necessary.

Further, NNSA and the Department are currently dealing with a number of major project management issues. These include, for example, concerns with the $3.5 billion National Ignition Facility (NIF) operated by Livermore – specifically, the ability of NIF to meet certain essential program goals; project cost and schedule concerns regarding the Chemistry and Metallurgy Research Replacement – Nuclear Facility, managed by Los Alamos that could cost over $5 billion; and, delays and cost overruns associated with completion of the $5 billion Mixed Oxide Fuel Fabrication Facility at the Department's Savannah River Site. The cost and complexity of

such projects, as we have seen, require robust Federal oversight to ensure that taxpayer dollars are well spent and that national security is protected.

In addition, the unique contractor indemnification provisions of the management and operating contracts place special burdens on the Federal management team. The Department/NNSA bears ultimate financial responsibility for nuclear-related contractor activities. The practical reality of this situation argues for effective Federal oversight of contractor operations.

The governance concerns that have been raised are serious and should be addressed. Improvement is always possible. However, the laboratories consistently describe their performance in such glowing terms, which includes a demonstrated record of successful outcomes, that we found it difficult to reconcile the fairly dire descriptions of these governance concerns with the successes the laboratories report with understandable pride.

Proposed Changes to NNSA Governance Model

Any decision to materially change Department/NNSA/contractor relationships should be founded on analytically-based research and facts. There are a number of threshold questions which, to the best of our knowledge, have not been answered with specificity and empirical support. For example, has the current oversight model hindered mission accomplishments and, if so, to what extent; how would a new model lead to tangible improvements in the quality and quantity of scientific and technological advancements; and, how would a new model improve accountability and transparency to better protect the interests of the taxpayers. Should a decision be reached to modify the NNSA weapons complex governance model, it is important to ensure

that: (1) historic safety and security concerns regarding weapons complex management are treated as a priority; (2) the synergies that result from the numerous collaborations between the national security laboratories, the Department's 13 other FFRDC's and other energy functions are not impeded; (3) expectations of the contractors are as clear and precise as possible; (4) metrics are in place to provide a sound basis for evaluating contractor/program performance, including the effectiveness of any new governance model; (5) any new operating formulation established as part of this process will be lean and mean, reflecting current budget realities; and, (6) contractors have a fully functioning internal governance system in place.[3]

Path Forward

The question of how to provide the most effective contractor oversight is of vital importance, especially given the degree to which NNSA relies on contractor support to accomplish its national security missions. We support efforts to find better ways to serve the taxpayers' interests. However, based on currently available information, we concluded that a "scalpel rather than a cleaver" approach ought to guide this effort. Further, the Government needs to be sure that before action is taken the problem is well-defined, the remedy is cost-effective, and the core mission is not harmed.

This concludes my testimony and I look forward to your questions.

[3] The Office of Inspector General is currently reviewing NNSA's implementation and execution of its Contractor Assurance System.

Mr. STEARNS. Thank you, and I will start with my questions.

Just as an overview I think everyone should understand Y–12 is a connotation given to this site because of the Cold War, and they didn't want to have people mention geographically what they were talking about, where it was, so Y–12 became the code name.

But if you go on Google maps and look at the site, you see that it is a brand-new site, and if you go onto Microsoft site, you see it is under construction. So this really is a site that has brand-new construction.

And so, Mr. Friedman, the first question I have for you is as I understand it, these people cut and got their way through three fences. Is that correct?

Mr. FRIEDMAN. That is my understanding, Mr. Chairman. Yes.

Mr. STEARNS. OK, and so is it three or four fences?

Mr. FRIEDMAN. Well, my understanding is it is three. There are people on the panel who may have more intimate knowledge than I do.

Mr. STEARNS. OK. We appreciate your hand being up, but we are limiting ourselves to the panel, if you don't mind.

Mr. FRIEDMAN. Well, people on the panel.

Mr. STEARNS. Yes. Is there anyone else who—yes, sir. Mr. Poneman.

Mr. PONEMAN. Sir, there is an outer perimeter fence——

Mr. STEARNS. OK.

Mr. PONEMAN [continuing]. At the ridgeline. They call it the 229 fence.

Mr. STEARNS. OK.

Mr. PONEMAN. That is not sensored. Then there were the three PIDAS——

Mr. STEARNS. OK. So they actually went through four fences.

Mr. PONEMAN. They would have had to come through the perimeter, yes, and then there were the three——

Mr. STEARNS. OK.

Mr. PONEMAN [continuing]. PIDAS fences——

Mr. STEARNS. So once they go through these four fences, it is assuming that all these fences there is some type of sensor device which would indicate—and there would be cameras. Is that true, Mr. Friedman?

Mr. FRIEDMAN. That is correct.

Mr. STEARNS. So there are cameras set up to monitor this?

Mr. FRIEDMAN. That is correct.

Mr. STEARNS. And how highly rated was Y–12 security prior to this incident? I mean, what was the record they were saying it was rated?

Mr. FRIEDMAN. The contractor self-assurance indicated that it was highly rated, and that was carried through——

Mr. STEARNS. I was told it was rated by the contractor and——

Mr. FRIEDMAN. The Federal personnel endorsed that rating.

Mr. STEARNS [continuing]. At 96 percent. Is that what—I was told that was what they rated it.

Mr. FRIEDMAN. I don't have a percentage for you, Mr. Chairman.

Mr. STEARNS. Would you consider it a Fort Knox type of security? I mean, that was the perception is, it had to be Fort Knox type of security?

Mr. FRIEDMAN. Mr. Stearns, this is my nearly 40 years in the Department of Energy. Y–12 was the Fort Knox of the Department.

Mr. STEARNS. OK. So they, these folks in the audience here, the three of them, they got through four fences that were sensored, and the cameras were all set up, and this was a new facility. Were the cameras new or old?

Mr. FRIEDMAN. There were actually—some of the equipment was fairly new, some of the equipment was old, but the, I think the salient point is that many of the cameras or some of the cameras were not operable and not operable——

Mr. STEARNS. OK. So the cameras were not——

Mr. FRIEDMAN [continuing]. For some period of time.

Mr. STEARNS [continuing]. Operable. Now, when you generally have a Fort Knox facility like this, wouldn't there be large maintenance records for these cameras that people would check them? Were there backlogs relating to these cameras?

Mr. FRIEDMAN. There were significant, we found significant backlogs and maintenance of——

Mr. STEARNS. Were there large maintenance entries into these backlogs to show that they were, the cameras were looked at?

Mr. FRIEDMAN. I am not sure I understand your question, Mr. Chairman.

Mr. STEARNS. Well, if you went into these backlogs that show the maintenance on these cameras——

Mr. FRIEDMAN. Right.

Mr. STEARNS [continuing]. Did you see maintenance on these cameras?

Mr. FRIEDMAN. Well——

Mr. STEARNS. You are saying they are inoperable. Wouldn't at some point somebody——

Mr. FRIEDMAN. Maintenance had not taken place.

Mr. STEARNS. OK.

Mr. FRIEDMAN. The cameras had not been fixed——

Mr. STEARNS. OK.

Mr. FRIEDMAN [continuing]. If that is your question.

Mr. STEARNS. OK. Well, how long were these cameras, these critical cameras not operable? Could you tell that?

Mr. FRIEDMAN. Well, we—there were elements of the security apparatus that were inoperable for at least 6 months and probably—and possibly beyond that. At least 6 months.

Mr. STEARNS. Now, who would you blame that for? The contractor or the site government operators?

Mr. FRIEDMAN. Well, Mr. Chairman, it is—that sounds like a very simple question, but it is a complex, the answer is somewhat complex.

Mr. STEARNS. Well, let me phrase it for you.

Mr. FRIEDMAN. There is enough—let me put it this way.

Mr. STEARNS. Do you think the responsibility—we pay contractors to do this. Is that correct?

Mr. FRIEDMAN. Correct.

Mr. STEARNS. And the contractors were responsible?

Mr. FRIEDMAN. Correct.

Mr. STEARNS. And we pay them significant fees? We do this, and they were not operable, and the maintenance backlogs show that no one was doing anything, so wouldn't you say the contractors——

Mr. FRIEDMAN. I would say they have a major share of responsibility. Yes.

Mr. STEARNS. And then the onsite government employees who are overseeing the contractors also have responsibility because they failed to catch this. Is that correct?

Mr. FRIEDMAN. They do. There was widespread knowledge and acknowledgement of the fact that these cameras, including amongst the Federal officials, that these cameras in other facilities were inoperable. I think their reaction to that was much too passive, much too lethargic.

Mr. STEARNS. Well, I think we have got them through four fences, we have got them through the sensing devices. We are not keying the personnel. The cameras were inoperable, so they got through, and as I understand there was a period of time where these three people were right at the facility and nothing still happened. Is that true?

Mr. FRIEDMAN. Well, there was a delay in the response and——

Mr. STEARNS. How long was the delay in response?

Mr. FRIEDMAN. I can't go into timeline.

Mr. STEARNS. OK.

Mr. FRIEDMAN. You may be able to get that information at the later classified briefing.

Mr. STEARNS. All right. So at this point we have obviously a dereliction of duty. Is there anyone on the committee that would like to add any questions, any response to some of my questions that I had?

Mr. PONEMAN.

Mr. PONEMAN. Sir, just for the record, it is my understanding, we will confirm this, you talked about all four senses being—fences being sensored. It is my understanding that there are no trespassing signs on the outer perimeter fence at the ridge line, but the sensors only come into play once you penetrate the first of the three fences that surround the actual facility. So I believe it would be fair to say that—and the sensor bed is inside those three fences, not out at the perimeter fence. But we will confirm that and come back to you.

Mr. STEARNS. Were the guards who were supposed to be there and take care and stop this, were they blind in any way? Was there any obstruction for them to see this? I mean, forget the cameras for a moment. Wouldn't you start to at some point say, gosh, what is happening? I am starting to see three people in my facilities wandering around. I mean, where were the guards? Were they—Mr. Friedman, what is your interpretation?

Mr. FRIEDMAN. As has been either implied or stated directly earlier, there were a huge number of false alarms ongoing on a regular basis. They are due to critters and squirrels and other things, so they were somewhat from my point of view numb to the number of false alarms. There was a delay in the response. The response of the first responder was less than adequate, so there was a—certainly shortcomings on the part of the——

Mr. STEARNS. OK. My time has expired.

Ms. DEGETTE. Thank you, Mr. Chairman. I think your questions really set up a factual foundation for what I want to talk about.

The first thing I want to do is I want to thank Sister Rice and the other people for coming today. I apologize. You won't be allowed to testify. I think it would be interesting to hear your perspective on how you were able to breach these four fences at the Fort Knox type of facility and perhaps we can talk afterwards.

But what I want to ask you gentlemen about is from my perspective this bill that we passed earlier this year, the National Defense Authorization Act, which is H.R. 4310, because what that does, as you know, it makes considerable changes to NNSA's structure and its oversight relationship with DOE. And a lot of us on both sides of the aisle are really concerned that the changes will have a significant impact on safety and security at NNSA.

So, Mr. Poneman, I wanted to start with you, and I wanted to ask you how H.R. 4310 changes the NNSA Administrator's authority to change nuclear safety and security requirements.

Mr. PONEMAN. Congresswoman, thank you for the question. It is our understanding that that legislation makes significant changes in the reporting structure and the authorities within the Department, that it significantly curtails the authority of the Secretary to direct the Administrator of the NNSA and that it provides for a number of things that would tend to delegate activities, for example, to a national lab director's counsel and so forth, that would then come in directly to the Administrator, and the Administrator under that legislation as we understand it would be granted much widened autonomy.

Ms. DEGETTE. Right.

Mr. PONEMAN. In addition, the Defense Nuclear Facilities Safety Board would be reduced in some of its authorities.

Ms. DEGETTE. And that would really undermine the DOE's authority for oversight. Correct?

Mr. PONEMAN. In our judgment, Congresswoman, as reflected in the statement of——

Ms. DEGETTE. Yes or no will work.

Mr. PONEMAN. Yes.

Ms. DEGETTE. Thank you. Now, as the current language is written, I think you mentioned this, somewhere down the line an NNSA Administrator could come in and actually reduce the safety and security requirements. Correct?

Mr. PONEMAN. It would curtail the Secretary's authority to——

Ms. DEGETTE. But they could actually reduce the requirements. Correct? Under the legislation.

Mr. PONEMAN. I think that became law. Yes.

Ms. DEGETTE. OK. Yes. Now, H.R. 4310 also changes NNSA's relationship with oversight bodies, including DOE's Office of Health, Safety, and Security and the Defense Nuclear Facilities Safety Board.

So, Mr. Poneman, maybe Mr. Podonsky can help you here. Can you talk to me about what changes it makes to NNSA's relationship with the DOE and independent oversight bodies?

Mr. PONEMAN. What changes the legislation——

Ms. DEGETTE. Correct.

Mr. PONEMAN. It would grant a much larger measure of autonomy to NNSA within the DOE system. The DOE system includes the HSS organization that Mr. Podonsky leads.

Ms. DEGETTE. OK. Now, do you think that is a good idea to reduce NNSA oversight? Yes or no will work.

Mr. PONEMAN. We have serious concerns——

Ms. DEGETTE. OK.

Mr. PONEMAN [continuing]. With the legislation.

Ms. DEGETTE. Do you think that if the bill is passed as is, it could have an impact on the security and safety of workers at NNSA sites?

Mr. PONEMAN. If the authorities of the Secretary are curtailed in that way, it could have an adverse effect.

Ms. DEGETTE. OK. Now, Mr. Gaffigan, I am not asking you to comment on the NDAA, but your testimony said, your written testimony said in 2007, the GAO concluded that the drastic change of moving NNSA away from DOE was, "unnecessary." Is that correct?

Mr. GAFFIGAN. That is correct.

Ms. DEGETTE. And so from your perspective is a significant overhaul of the agency structure necessary to solve the problems we are seeing today? Yes or no will work?

Mr. GAFFIGAN. Not necessarily.

Ms. DEGETTE. OK.

Mr. GAFFIGAN. We have to focus on——

Ms. DEGETTE. So you don't think we necessarily need a significant overhaul. Right?

Mr. GAFFIGAN. We have not seen the problem of being excessive oversight. We have seen the problem being ineffective oversight.

Ms. DEGETTE. Ineffective. Yes. Less oversight is not the solution here. Right?

Mr. GAFFIGAN. We have not seen excessive oversight as the problem.

Ms. DEGETTE. OK. Mr. Friedman, what do you think? Would reorganizing the NNSA so that contractors have more autonomy and less oversight solve the problems of the agency?

Mr. FRIEDMAN. Well, Ms. DeGette, I would characterize it as the tail wagging the dog frankly. I think that it would be a mistake to dramatically lessen the quality of the oversight.

Now, there are, as I have indicated in my testimony, there are improvements, and intelligent oversight is extremely important. So there are improvements that can occur——

Ms. DEGETTE. Right.

Mr. FRIEDMAN [continuing]. But I think the legislation that you are referring to goes too far.

Ms. DEGETTE. So I just have kind of one last question, and I am going to ask you, Mr. Friedman, and you, Mr. Gaffigan. Do you think that really burdensome oversight caused Sister Rice and her colleagues to be able to gain access to a secure area at a nuclear facility?

Mr. FRIEDMAN. Well, as——

Ms. DEGETTE. Yes or no. Do you think the reason she got in there was because there was too much oversight?

Mr. FRIEDMAN. Clearly not.

Ms. DEGETTE. OK.

Mr. FRIEDMAN. No.
Ms. DEGETTE. Mr. Gaffigan?
Mr. GAFFIGAN. No. No.
Ms. DEGETTE. Thank you. Thank you very much, Mr. Chairman.
Mr. STEARNS. I thank the gentlelady.
Mr. Barton, the former chairman of the full committee, is recognized.
Mr. BARTON. Thank you. The—I had to go do a little press interview while the chairman was doing his questions, but my understanding is he established that there were four fences that were breached. Is that correct?
Mr. PONEMAN. Yes, sir.
Mr. BARTON. OK. Were they all chain-linked fences?
Mr. PONEMAN. Yes, sir.
Mr. BARTON. All chain-linked fences. Is it classified how long that took?
Mr. PONEMAN. Yes, sir.
Mr. BARTON. It is classified? Were there any cameras that were operable? We know that there are some that weren't.
Mr. PONEMAN. Yes, sir.
Mr. BARTON. Were there some that were?
Mr. PONEMAN. There were cameras at the site that were operable.
Mr. BARTON. They just weren't where these people were doing their thing. Let us assume that we actually had good security. What would have happened had it been discovered that these three individuals were trying to get in the facility?
Mr. PONEMAN. The sensored part of the fences are the three fences that are relatively close to the facility, Congressman. If the system had worked properly, as soon as they penetrated the first link, the sensor would have gone off, and when they saw as would be the case when people were coming through, that there were multiple sensors going off, there would have been an immediate response within 1 or 2 minutes of guards on the site.
Mr. BARTON. So even if it had been working and the guards had been alert and everything that was supposed to have been done would have been done, they would have been able to get through the first fence before anything was done. Is that correct?
Mr. PONEMAN. Yes, sir. The theory is one of layered defenses, and we could go into classified session. There are many, many layers between that outer-most security fence and the sensitive material but——
Mr. BARTON. Well, I am——
Mr. PONEMAN [continuing]. That would be what triggered the response.
Mr. BARTON [continuing]. Not a security expert, but I would assume that we would have a security system at a weapons complex or an enrichment facility that if anybody got within 10 feet of the first fence, alarms would start going off and dogs would start barking and loud speakers would say, get away, get away or something like that instead of letting them actually walk up to fence, use a pair of wire cutters, and cut the fence before anybody even assumes that there is something wrong. I mean, that seems to me to be a

little bit lax. Am I just not with it to think that we shouldn't even let them get near the first fence?

Mr. PONEMAN. When you walk into the facility, Congressman, you have to establish the perimeter in some specific place, and you have to put the first sensor in some specific place. That sensor is placed in such a manner as if it had been responded to appropriately before they were able to do anything at the wall, there would have been security forces on site. So you have to put the first sensor somewhere.

Mr. BARTON. But my point is you don't let them get close enough to take out the wire cutters without somebody noticing you. If I were to go to the facility today with a pair of wire cutters, hat on that says I am a fake terrorist, I would hope somebody would notice that before I started cutting on the fence.

Mr. PONEMAN. Well, I assure you, Congressman, we are taking a full review of the full profile. You could see if doing something at the outer perimeter fence up at the ridge line would be better, but then you are talking about acres and acres of security, which is challenging.

Mr. BARTON. You—is the deputy secretary at the Department of Energy the number two official?

Mr. PONEMAN. Yes, sir.

Mr. BARTON. So you—the Secretary is number one, and you are number two?

Mr. PONEMAN. Yes, sir.

Mr. BARTON. Could you rank this issue in a priority of issues at the Department of Energy for management attention of you and the Secretary? Is this a top five issue, a top ten issue, top 100 issue?

Mr. PONEMAN. Congressman, there is no issue that we are dealing with more forcefully and with greater concentration than this issue. This is protecting our nuclear material. It has top priority.

Mr. BARTON. So this has got the personal serious attention of you and the Secretary?

Mr. PONEMAN. Hours and hours.

Mr. BARTON. OK, and the gentleman to your right, Mr. D'Agostino. Is that close?

Mr. D'AGOSTINO. Mr. Barton, D'Agostino.

Mr. BARTON. D'Agostino.

Mr. D'AGOSTINO. Yes, sir.

Mr. BARTON. I would assume that on a day-to-day basis you are the person in—ultimately responsible for this at the Department, at the—I know you are at the Nuclear Security Administration, but I would assume that you are the number one person in terms of just thinking about this. Is that correct?

Mr. D'AGOSTINO. Every day since—every day I think about this issue and specifically but every day I also think about security in general. This is the number one priority for me. Bar none.

Mr. BARTON. Do you believe since it is your number one priority that we can fix this problem?

Mr. D'AGOSTINO. I believe we can fix it. We have work to do. It is inexcusable. It is appalling. The language the committee has used here I would agree with. We have to work aggressively. We have taken unprecedented steps to address this particular problem.

It is important to hold organizations accountable. It is important to hold people accountable for this, and we are working through that particular process.

In addition to the steps we have taken, we believe there are more steps to take, and we are working very closely with Glenn Podonsky and the HSS organization to make sure we actually have that right.

Mr. BARTON. My time has expired, but I want to ask one more. Is it possible under current policy at the Department of Energy to terminate the contractor who allowed this to happen?

Mr. PONEMAN. Sir, we—because of this incident issued what we call a show-cause notice to the contractor, which gives them a set period to respond. Given the facts that are inconsistent with our contractual responsibility to provide security, to show cause why the contract should not be terminated.

Mr. BARTON. So the answer is yes, they can be terminated.

Mr. PONEMAN. Yes, sir.

Mr. BARTON. OK. Thank you, Mr. Chairman.

Mr. STEARNS. The chairman emeritus was really asking the question, I will ask it for him, has anyone been fired because of this incident?

Mr. PONEMAN. Sir, there have been a number of personnel changes. The way the structure——

Mr. STEARNS. No one has been fired, though?

Mr. PONEMAN. Oh, no, no, no. There have been a number of changes. The two top contractor officials at the site retired within 12 days.

Mr. STEARNS. OK.

Mr. PONEMAN. A number of other people have been moved out of their positions, from the guard force to the contractor as well.

Mr. STEARNS. It doesn't sound like anybody has been fired.

Ms. Christensen, you are recognized for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I am going to direct my questions at Mr. Poneman, but I would believe that Mr. Podonsky might be able to assist in answering.

The DOE's office of Health, Safety, and Security has been able to identify major security flaws within several DOE nuclear facility sites through the various security and safety oversight inspections that it conducts.

So, Mr. Poneman, can you talk briefly about the inspections the Office of Health, Safety, and Security is currently doing across the DOE complex?

Mr. PONEMAN. Yes, Congresswoman. We highly value their role as our internal independent oversight organization, and therefore, the Secretary directed Mr. Podonsky to, A, dispatch a team immediately to Y–12; B, to assemble a team that draws from other parts of the Department to make sure all of the sites in the complex that have Category 1 nuclear materials are looked at quickly to see if there are any urgent changes that we need to make in other sites; and then the third thing we have asked Mr. Podonsky to do is an in-depth, what we call a comprehensive inspection by his oversight organization, which will take 3 weeks at each of the 12 sites and over the course of 12 months do a deep drive, force-on-force testing

and make sure if there are deeper problems that need to be addressed that we can do that.

Mrs. CHRISTENSEN. OK, and Mr. Chairman, these assessments will certainly be helpful to the committee and perhaps we could have DOE come back to us once they have finished those assessments.

So what kind of inspections did HSS do at Y–12 facility before, and what did they find?

Mr. PONEMAN. I think I would let Mr. Podonsky address that.

Mr. PODONSKY. Yes, ma'am. In 2008, we did what we call a comprehensive security inspection. By definition comprehensive means that we do force-on-force, limited scope performance testing, we look at personnel security, protection program management, physical security systems, material control accountability. We look at the entire kaleidoscope of security subjects to make sure that we know how effective the requirements are being implemented. It is not just an inspection to make sure that people are complying, but we also take a look to see how they are performing, and it was in that inspection that we identified a number of serious problems that resulted in findings that the NNSA, according to DOE orders, would then be responsible for fixing and putting a corrective action plan in place, which they did. Many of those findings, we believe, if they were completely fixed and maintained, then perhaps the events that occurred in July of 2012 would not have occurred.

Mrs. CHRISTENSEN. So when did that take place?

Mr. PODONSKY. That was in 2008, and the report was issued in 2009.

Mrs. CHRISTENSEN. So you don't believe that all of the vulnerabilities were addressed, or they were addressed but not maintained?

Mr. PODONSKY. In all fairness they were addressed in 2009, they put together the corrective actions, but then as 2010, 2011, we believe they deteriorated.

Mrs. CHRISTENSEN. Is there any reason that we should be worried about other facilities that may be susceptible to similar breaches?

Mr. PODONSKY. We should always be looking for improvements, Congresswoman, and that is why the Deputy and the Secretary directed us to go out and do immediate comprehensive inspections of all of our Category 1 facilities.

Mrs. CHRISTENSEN. Thank you. The August IG report revealed that several of the security mechanisms in place at the Y–12 facility, if functioning properly, would have allowed personnel to quickly identify and locate the intruders. Mr. Friedman, can you tell us what those mechanisms were?

Mr. FRIEDMAN. Well, the cameras are a perfect example. They have been discussed already during the hearing. They should all have been fully functioning, and the maintenance process should have been such that high priority maintenance, high priority security components would have been repaired within a very short period of time, if, in fact, they were—they broke down for any—or became inoperable for any reason.

Also, we found another was compensatory measures. The compensatory measures are implemented when there is a mechanical

failure. They were in place for much too long, and therefore, they lost their character as a short-term measure to address a problem in the immediate term but not the long term as it was intended.

Mrs. CHRISTENSEN. And who is responsible for that, for maintaining the cameras? Was it the contractor, was it——

Mr. FRIEDMAN. Well, the contractor had primary responsibility, but there certainly was responsibility on the part of the site officials, the Federal site officials as well.

Mrs. CHRISTENSEN. Well, you know, the incident, as has been said, makes it clear that independent DOE oversight of NNSA and its contractors is very important, and I look forward to seeing the outcome of DOE's inspections throughout the nuclear complex and the actions taken in response to these inspections.

Thank you, Mr. Chairman. I yield back.

Mr. STEARNS. Thank the gentlelady.

Mr. Terry from Nebraska is recognized for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman, and first I just want to say that I appreciate the gentlelady, Diane DeGette's questions about some legislative language, and I happen to agree with her position, and I think most of us do, that we need more oversight, efficient oversight, force-on-force. I mean, we can't do enough here to make sure that they are secure. So we have to change a culture.

But I want to go back to the cameras, because as I understand security, it isn't that sensors are number one and then cameras are number two, and there is kind of list that you go down. Sensors and cameras are part of the same. They are yin, and they are yang. Sensors go off, you view the cameras to see what is occurring. So I think that would be critical, but yet it was deemed not to be critical. Is that correct, Mr. Poneman?

Mr. PONEMAN. Yes, sir. On both points. It is critical, and it was not deemed to be critical.

Mr. TERRY. Yes, and so how long were—I don't know if we established how long the cameras were not operating, how many weeks, days, months.

Mr. PONEMAN. In at least one instance the IG report noted the camera was broken on the order of 6 months.

Mr. TERRY. Six months.

Mr. PONEMAN. Yes, sir.

Mr. TERRY. Six months for something that universally at this table you would deem cameras as critical.

Mr. PONEMAN. Yes, sir, and indeed——

Mr. TERRY. Someone there made a decision that they weren't critical. Who was that, or what entity makes that decision?

Mr. PONEMAN. That was something that would have been in the hands of the M&O contractor to propose what——

Mr. TERRY. It would be a guess.

Mr. PONEMAN [continuing]. And what is not and then it would be up to the Federal oversight to be cognizant of that and to be allowing it to continue.

Mr. TERRY. I appreciate it. Did you want to say something?

Mr. D'AGOSTINO. No, just—I was making sure my microphone was off because I thought I saw the light on. I wanted—I agree with—the Deputy Secretary said it absolutely right. We have a contract with our M&O contractor down in Y–12 to take care of this

equipment, put it on a high priority. The camera maintenance was not prioritized to be fixed. Our Federal oversight should have caught that. That information as it is floated in reports and oversight from the program side in Washington should have been able to pick that data out. As the Inspector General said, there were indicators in our reports, but when there are too many indicators, the real indicator gets lost in the noise, and so the important thing here is on oversight, in my opinion, and I do greatly——

Mr. TERRY. That is what we want.

Mr. D'AGOSTINO. Yes, sir. That we have to make sure our oversight is done not only in the quantity but in the quality that allows us to——

Mr. TERRY. Absolutely.

Mr. D'AGOSTINO [continuing]. Pick out these flags and not have the important indicators buried in reports. That is an important thing from my standpoint.

Mr. TERRY. Very good. I am just curious, Mr. Poneman. How—these were down, cameras were down for 6 months. Once they were fixed, evidently they were fixed within a couple days after the incident. Is that correct?

Mr. PONEMAN. Yes, sir. They have all been fixed, sir.

Mr. TERRY. What was wrong with the cameras?

Mr. PONEMAN. I don't know what was wrong the cameras, but I think Mr. D'Agostino put it very well.

Mr. TERRY. Mr. D'Agostino, do you know what was wrong with the cameras?

Mr. D'AGOSTINO. Not in a specific way. We can get—take that question for the record and get back to the committee.

Mr. TERRY. Mr. Podonsky, do you know?

Mr. PODONSKY. I have an inspection team on the site right now, and what I understand were those two particular cameras that were out. One was an inner workings of the camera. It took 24 hours to fix that. The other one was a trip switch that had to be just flipped on.

Mr. TERRY. A trip switch. What does that mean?

Mr. PODONSKY. I am not a systems engineer, but that——

Mr. TERRY. Is that a circuit breaker?

Mr. PODONSKY. A circuit breaker was flipped.

Mr. TERRY. So all they had to do was look at it and go like that, and that camera would have worked again?

Mr. PODONSKY. That is what my inspectors are telling me.

Mr. TERRY. But it was down for 6 months. So I guess to conclude in the last 40 seconds, Mr. Friedman, you made a comment regarding we need a scalpel, not a cleaver.

Mr. FRIEDMAN. I did.

Mr. TERRY. I may disagree. When you have that level of incompetence, to keep the same people and organization in place probably isn't a good decision. There we probably need a cleaver.

I yield back.

Mr. STEARNS. Ms. Schakowsky is recognized for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I want to focus on a more fundamental question involved in all of this. That is the use of a private contractors altogether. You know, we made a decision in—as a country in 1828, that we would be protected here at the

Congress, members of Congress and the public, by people who wear the badge, and I am looking at the recruiting Web site, and it says, "Wear the badge, feel the honor, the moment of transformation when you slip into the uniform. Put on the badge and join our elite ranks. What does it take to join this prestigious team? A deep sense of patriotism, unyielding dedication to protecting the public, and a passion for the American way of life are just the beginning."

DOE is the largest non-defense department contractor and agency in the Federal Government, and this is probably one of the most sensitive missions; stewardship of the Nation's nuclear weapon stockpile. And when you look at who the contractor—the company that holds the security contractor is WSI Oak Ridge. It is my understanding that this is a local branch of G4S Global Solutions, formerly known as Wackenhut, the same company that recently apologized to the British Parliament for failing to provide enough security guards for the London Olympics, and that they also own the company, Armor Group, which was involved in serious abuses, including sexual hazing and disgusting photos we were all privy to at the U.S. Embassy in Cabo in 2009.

Now, I don't understand, one, why this company has any role to play. I would like to know if you have any concerns about the performance of this particular company. If the government has taken any steps to hold both B&W Y–12 and WSI Oak Ridge accountable for the security breach and any other misconduct. I have seen reports that the current contracts for B&W expire September 30, and WSI's contract ends November 30 and wondered if we are going to get rid of them, and perhaps even more fundamentally, I wonder if anybody has really looked at, done a cost analysis of what it would be to have someone with pride wear the badge of the United States of America, be in the line of command, and guard something as sensitive as this rather than hiring these private outside contractors.

That is a lot of questions, but I would like to at least begin——

Mr. PONEMAN. These are profound questions, Congresswoman, and they come in two sections. I am going to address each of our concerns.

The question you raised about whether the protective force should be Federal employees or contractor employees is a longstanding question that has been looked at back to the late 1940s when it first went in the direction that it did for security contractors being hired. What you said about that sense of mission and patriotism, that is what we believe should be held by all of us, including contractors. We say that we all work for the President.

Now, there have been a number of reports, including GAO reports, that have weighed the pros and cons, of which there are many, but it comes down to something that I think Mr. Gaffigan said well in his testimony. There is no substitute for management, and you have to stay——

Ms. SCHAKOWSKY. Well, talk to me about this particular company. Haven't they done enough to preclude them from being hired? I mean, how many apologies have to be issued?

Mr. PONEMAN. That is the segue to the second part of your question. Now, in this particular case the first thing we did was we found that since the contract structure had an independent con-

tract for the protective force, this aggregated from some of the systems that your colleague mentioned, we put Wackenhut under the M&O contractor so we had a single command. Point one. Point two, we then issued the show-cause notice that said given these security breaches that were experienced at Y–12, the contractors which would include both the M&O contractor and Wackenhut or WSI at the site, show cause why the contract should not be terminated. And the third point is on your point about the contracts soon to expire, any subsequent competition would be informed by the record of the contractors in their last term of service under contract. So that would very much influence any decision, and there would, therefore, be consequences.

Ms. SCHAKOWSKY. Let me just say, if this were part of the normal chain of command of people who wore the badge of the United States of America, these people were out, they would be sanctioned, there would be some consequence immediately for that. It seems to me a company who has been engaged in the kind of practices that they have, first of all, should be off the list of contractors, and I think we ought to reconsider this issue of whether or not private contractors are appropriate for this level of sensitive mission.

And I yield back.

Mr. FRIEDMAN. May I just point out, if I might, that in November of 2011 we in our management challenge report for the Department of Energy, we recommended that we take a close look at how the structure and the provision of protective forces at the DOE facilities around the country, including, by the way, Argon and Fermi, and one of the options that we put on the table was, in fact, federalizing the workforce. It is a very complicated issue. It goes back a long time as the Deputy Secretary indicated, but we think it is time to relook at that issue, and we agree with you there.

Mr. STEARNS. The gentlelady's time has expired.

Dr. Burgess is recognized for 5 minutes.

Mr. BURGESS. So if I just heard you correctly, Mr. Inspector General, you said it is now, you feel it is now time to relook at the issue. You know, there was a situation in 2007, six cruise missiles, each loaded with a nuclear warhead, mistakenly loaded on a B–52 bomber at Minot Air Force Base and transported to Barksdale, North Dakota, to Louisiana. The warheads were supposed to be removed before the missiles were taken from storage. The missiles with the nuclear warheads were not reported missing and remained mounted to the aircraft at both Minot and Barksdale for 36 hours. The warheads were not protected by various security precautions required for nuclear weapons. They never left the base, no one sprayed paint on them, no one protested, but Secretary Gates demanded the resignation of the Air Force Secretary and Chief of Staff of the Air Force.

Where is the sense of urgency here? I haven't heard it this morning. Mr. Terry said scalpel and cleaver, he prefers a cleaver. I don't understand why these individuals are free to be here in the hearing room today. Why are they not incarcerated? My understanding is they have been charged with both criminal trespass, which is a misdemeanor, and destruction of Federal property, which is a felony. My understanding is one of the individuals is a repeat offender. Do they pose a flight risk? I don't know. They don't seem

like reliable individuals. It is hard to be against a nun and a house painter and an electrician, whatever their professions are, but at the same time why are they even here in this hearing room? Why are they not being held in detention somewhere? What is to prevent them from doing the very same thing tomorrow night or the night after?

Mr. Barton posed a very good question. Carrying a Bible to a secured nuclear facility is one thing, but it could have been anything. It could have been anything. Where is the sense of urgency to stop this problem? The POGO folks, the oversight guys that are always posting stuff said the Boy Scouts would have done a better job. So where is the sense of urgency?

Mr. PONEMAN. Congressman, there is, if that is directed to me, there is no greater urgency that we face in the complex. We are working this every day, all day, and we have from the day of the incident, and we immediately took the actions to remove the guards who were responsible, we immediately fixed the cameras, we immediately dispatched teams, we immediately took the general from our Pantex facility who is an expert at security and sent him up to make sure that the best practices that are enforced in Pantex, and we have done this from day one, and we continue to do it, and we are going to keep working at it until we feel confident that it—the job has been well done.

Mr. BURGESS. Have those guards been fired? I think the answer to that question is, no, they have been reassigned. Are they going to be barred from working on any sort of similar security arrangement in the future? I don't think we have gotten an answer to that. Who in the agency is taking responsibility? Secretary Gates asked for the resignation of the Assistant Secretary of the Air Force. Where is that accountability in this situation, which I would submit is no less serious than what occurred in Minot, North Dakota.

Mr. PONEMAN. We agree with the seriousness, Congressman. That is precisely why we have got General Finan doing the internal reviews. We have taken the people who were on the line in terms of our own Federal oversight and reassigned them to permit that review to be unimpeded, and we will follow every fact trail to the end of the earth and find out what happened. We will, as Secretary Gates did, hold people responsible.

Mr. BURGESS. Well, I think the response was much more immediate in Secretary Gates' situation.

Mr. Friedman, Inspector General Friedman, on the issue of compensatory measures, one of the Federal officials according to your report, this is—I am referencing here the special report in the inquiry of the security breach at the National Nuclear Security Administration's Y–12 national complex under compensatory measures on page 4. You say one of these Federal officials also indicated that they had been instructed not to evaluate and report on how the contractors were conducting business. Is that an accurate statement?

Mr. FRIEDMAN. That is an accurate statement.

Mr. BURGESS. Well, if that is the case, as long as they were doing an adequate job was the other part of that statement. In this case were they doing an adequate job in deciding how to accomplish their security mission for the Department of Energy?

Mr. FRIEDMAN. As the very essence of our report is we think not.

Mr. BURGESS. So I guess my question to you is, I mean, you are the law enforcement person here. You are the Inspector General. Where is the accountability that you are going to extract because they clearly failed at their mission?

Mr. FRIEDMAN. Well, you are right in your characterization of what my job is and included, by the way, effectuating the arrest of the three trespassers, and we are proceeding on that case, and your earlier point, Doctor, is—Dr. Burgess, is exactly correct. The judicial system is now the timing mechanism. It is not the Department of Energy or the Office of Inspector General.

With regard to your second point is we generally do not identify particular individuals, there are cases where this does occur, who ought to be fired. That is the responsibility of management to take our report and the other information they have available to them and make whatever judgments they see to make with regard to firing individuals, personnel actions, or disassociating the Department from certain contractors who have not acted well.

Mr. BURGESS. These are individuals who walked through the so-called fatal force zone. At Los Alamos several years ago I saw a force-on-force exercise out there. It was pretty impressive, all of the tools that they had at their disposal. Why was none of that used?

Mr. FRIEDMAN. Dr. Burgess, I am sorry. I really—could you repeat the question? I am sorry.

Mr. BURGESS. At Los Alamos in 2005——

Mr. FRIEDMAN. Right.

Mr. BURGESS [continuing]. I was given a demonstration of the force-on-force exercise that would be instituted were there a serious security breach. I would submit that this was serious. Got through four fences. They had something the size of a Bible. Where was—what would it have taken to institute that force-on-force——

Mr. STEARNS. The gentleman's time has expired. You go ahead.

Mr. FRIEDMAN. The answer—well, my answer to your question, Dr. Burgess, is really the following. One of the—and I—the fact that the nun, one of the trespassers is here today makes this even more meaningful, I suppose, is we have testimony from sharp shooters who were on the protected force at the site, that if the trespassers, if they had clear sight of the trespassers, they might have taken them out or attempted to take them out at that time. So the aggressive force that you witnessed on the force-on-force exercises at Los Alamos exists, at least theoretically, at Y–12 as well.

Mr. STEARNS. To confirm them, you had snipers at Y–12?

Mr. FRIEDMAN. Well, I don't want to characterize their abilities. They are highly trained, very professional, paramilitary, former Seals, very competent individuals in terms of their physical abilities and the training generally. Clearly there was a breakdown in this case, but you should not believe that these are people who are not equipped to do the job when they have to do the job.

Mr. STEARNS. I understand. The gentlelady from Florida, Ms. Castor, is recognized for 5 minutes.

Ms. CASTOR. Thank you, Mr. Chairman, and let me start by expressing my dismay over this security breach. It is appalling on all levels for the government and for the private contractors that had responsibility here.

Last night the Washington Post published a story noting that the security lapses that allowed three protesters, including an 82-year-old nun, to gain access to the secure Y–12 area at Oak Ridge National Lab, that those security lapses had been identified by government investigators 2 years before the break in. According to the Post a 2010, classified report by DOE inspectors found that, "security cameras were inoperable, equipment maintenance was sloppy, and guards were poorly trained."

Mr. Poneman, are you aware of this report?

Mr. PONEMAN. Yes, ma'am.

Ms. CASTOR. Is what is being reported accurate?

Mr. PONEMAN. Obviously it is a classified report. We would be very happy to go into it in closed session, and I would suggest we defer.

Ms. CASTOR. What can you tell us now?

Mr. PONEMAN. What I can tell you is what we have been very clear about, which is the characterization that you have used and your colleagues have used. "Appalling" is apt, that as Mr. Gaffigan has testified it is not just a matter of finding the thing that is wrong and fixing it but sustaining that level of effort and that we, therefore, had a breakdown up and down the chain, including a sense of complacency that something like this could not happen, and we are vigorously doing everything we can to root that out and to put in place more effective security.

Ms. CASTOR. Can you tell us that after that 2010, report came out that it was reviewed with Babcock and Wilcox, your contractors, Wackenhut, WSI Oak Ridge?

Mr. PONEMAN. I can tell you that that is what is supposed to happen with those kind of reports. In terms of what happened with that particular report, we would have to come back to you. I don't know exactly——

Ms. CASTOR. And Mr. D'Agostino, did I see you nod that it was reviewed with the contractors?

Mr. D'AGOSTINO. Yes, ma'am. As part of standard practice all independent inspection reports by the Health, Safety, and Security organization are briefed to both the Federal officials and the contractor officials at each site. Given the consistency of Mr. Podonsky's organization doing these inspections, which he could confirm, but there is no doubt in my mind that there is, that these reports are in their hands, they get copies, they are copied on the reports, they have the reports.

I do as well. I get, typically get the report, I read the executive summaries, I am briefed by Mr. Podonsky's organization to give me the overall sense of the conditions. That is standard practice. The key, though, for me in this particular case is it is not enough just to read an executive summary and take a high-level look at the findings and get a brief by the organization. I actually have to read every page of that report.

Ms. CASTOR. Who is responsibility is it then to sit down with the contractors, with Babcock and Wilcox, Wackenhut, WSI Oak Ridge to go through that? Did you do that, Mr. Podonsky?

Mr. PODONSKY. Ma'am, what we do and we have been doing for 2 decades, is we independently assess the performance of the contractor and the feds on the site, and then we issue a report that

is validated, and I won't bother to explain all the details, but it is a very rigorous process. So we spend——

Ms. CASTOR. I wonder if anyone here at the table read that report in 2010, and actively discussed it personally with the contractors.

Mr. PODONSKY. I will tell you that when the team is on site as they are right now at other sites, including Y–12, they actively validate daily——

Ms. CASTOR. I am just wondering if any of you here had that report and had that discussion with the contractors.

Mr. PODONSKY. I read my reports. Yes, ma'am.

Ms. CASTOR. And then did you——

Mr. PODONSKY. And then it is up to the line to discuss with them, with their contractors and with their own staff how they are going to correct it. We don't——

Ms. CASTOR. So you didn't have any personal conversations on the phone or in person with the contractors? I am just wondering if anyone, if it was anyone's responsibility to do that or if anyone did that here.

Mr. D'AGOSTINO. Ma'am, it is my responsibility to make sure my organization and my security organization does exactly that, go over the details of the report. As I mentioned earlier, I get the executive summaries, I get a brief by the independent inspection organizations on these reports, which I did in this particular case, and the key is—and so I count on my security organization to go through the details page by page——

Ms. CASTOR. OK. Thank you, and Mr. Friedman, I have—your recent Y–12 report suggests that there may have been systemic failures to address maintenance issues at Y–12. I would like to know in a broader perspective were the problems you saw at Y–12 symptomatic of larger issues here at this agency or the DOE?

Mr. FRIEDMAN. Well, symptomatic in the sense that we have concerns about the whole notion of contract administration and contractor oversight and how that is effectuated throughout the Department, yes. In terms of security, you know, to be totally candid with you we have—we issued a report on a compromise of a force-on-force exercise in 2004. So we have had some continuing—at Y–12 but that——

Ms. CASTOR. And then back on the accountability for the contractors, are there any penalties built into these contracts? I understand that you have now taken action, began proceedings to fire the management contractor, the subsidiary of Babcock and Wilcox, but are there any penalties built into these type of contracts so that if a breach like this occurs, not only do personnel lose their jobs but there is some payment back to the DOE or the government?

Mr. D'AGOSTINO. The government always has the ability to reach back and look at past performance and make adjustments consistent with the contract, and our plans are to do just that in this case, ma'am.

Mr. STEARNS. The gentlelady's time has expired.

The gentlelady from Tennessee is recognized for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and I thank you all for your patience. I hope that it is not lost on you that this is some-

thing that concerns us tremendously, and having served in the State Senate in Tennessee, knowing how proud individuals in that part of the State are of that facility, having visited the facility many times myself, I think not only did you have a security breach, but you have now what you are seeing is a breach of the public trust in that area. You are charged with keeping that facility safe. You are charged in keeping the employees at that facility safe, and it is such—the ineptness and the negligence is mindboggling as we look at this.

Now, I want to go back to this 2010, report. A report comes out in 2010, and you review this report. Now, you have to review it with the contractors. Am I right there, Mr. Podonsky? I think——

Mr. PODONSKY. Yes. We validate the content——

Mrs. BLACKBURN. OK.

Mr. PODONSKY [continuing]. To the contractors and the site——

Mrs. BLACKBURN. OK. Now, with the site, who is the buck stops here? Who is—do you have a guy who makes the decision at that facility that says, these are serious issues?

Mr. PODONSKY. That would be the site manager, the Federal site manager.

Mrs. BLACKBURN. OK. The Federal site manager. Did that individual make that decision that this was serious, and did they hold Babcock and Wilcox and WSI responsible and say, we are going to tie your money up until you straighten this out?

Mr. PODONSKY. I would tell you from the independent oversight perspective that is what is supposed to happen, and then we as an organization brief it up as Administrator D'Agostino said, we did brief him and his security staff back in Washington. So it is up to Administrator D'Agostino to then make sure that the corrective actions through the site manager are——

Mrs. BLACKBURN. Mr. D'Agostino, did you follow up with the site manager?

Mr. D'AGOSTINO. Yes, ma'am.

Mrs. BLACKBURN. Did the site manager say we have taken action to fix these security lapses?

Mr. D'AGOSTINO. Yes, ma'am. In the 2009, report that was referenced——

Mrs. BLACKBURN. When did he show proof that he had taken that?

Mr. D'AGOSTINO. The—I will have to get you the exact month that he showed proof, but we had validated the closure of all of the findings, including the cameras——

Mrs. BLACKBURN. OK. Then who is responsible that it didn't get done?

Mr. D'AGOSTINO. The problem——

Mrs. BLACKBURN. Let me ask you this. Have any of you been on the ground at the Y–12 facility?

Mr. D'AGOSTINO. Yes, ma'am.

Mr. PODONSKY. Yes, ma'am.

Mrs. BLACKBURN. All of you have been there?

Mr. PONEMAN. Yes, ma'am.

Mr. GAFFIGAN. Yes, ma'am.

Mr. FRIEDMAN. Yes, ma'am.

Mrs. BLACKBURN. So all of you went, and all of you looked at this physical facility, and all, each of you reviewed the items that were pointed out and made sure boxes were checked that they had been repaired and signed off on this. Am I right on this?

Mr. PONEMAN. No, ma'am. I visited this site——

Mrs. BLACKBURN. OK. Mr. Poneman.

Mr. PONEMAN [continuing]. On earlier occasions, and as you know having visited the site, it is an impressive site.

Mrs. BLACKBURN. Yes, it is.

Mr. PONEMAN. And the problem——

Mrs. BLACKBURN. And it deserves to be protected.

Mr. PONEMAN. And it deserves for the site, for the people of the Nation, absolutely correct. One of the problems here is you have an evidence that looks like invincibility, but we had specific shortcomings that were not adequately identified or if they were fixed, the system was not fixed to the point that it was sustained. These are the things that we are trying to get our arms around right now.

You are absolutely right. It has to have that kind of top level——

Mrs. BLACKBURN. See, it just seems incomprehensible that you could have said we have this report, we are doing this review, we have these problems, the problems are not fixed, are not fixed to completion. How could you continue the contract if they are not completed, and I have to tell you, listening to you all this morning, I got to tell you something. This is classic bureaucratic pass the buck. It is not my problem. It is somebody else's problem. Well, it is your problem.

Mr. PONEMAN. Congresswoman——

Mrs. BLACKBURN. You are charged with the responsibility of protecting these facilities, and we are charged with conducting the appropriate oversight for this, and to say, well, I reviewed it and so and so said—somebody somewhere has to say are the cameras working, are the fences complete. If you have got, what is it, 200 false alarms, you should know that there is a problem with something causing the false alarms. You know it is wildlife in this area. Is that not correct? So you fix it, but you don't allow it to continue and continue to pay the contract and then have something like this occur where you have individuals inside this facility. The security culture and the safety culture demands a better product from you all.

Mr. PONEMAN. Congresswoman, in terms of the priority that it deserves and in terms of the cultural requirement to be ever vigilant, you are absolutely correct. That is why within days of actually knowing about the problems, the problems that had been identified had been fixed, and we are now about the business of making sure, A, that we don't have problems like that anywhere else in the system, and B, that we take permanent, sustained, and sustainable measures to make sure that it is——

Mrs. BLACKBURN. Sir, my time has expired, but I would offer that you fixed them after you were embarrassed, and you fixed them 2 years too late.

I yield back.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. A question for everyone on the panel. The National Defense Authorization Act was passed by this chamber earlier this year, allows the National Nuclear Security Administration sites to adopt OSHA workplace standards in lieu of the NNSA present standards.

Can anyone on the panel tell me the differences between what NNSA's present standards and the standards the House NDAA would allow? In addition, the OSHA standards provide more protection. Would OSHA standards provide more protection for the workers at those nuclear sites, and would OSHA standards be easier to enforce?

Is OSHA stronger than what was original standards?

Mr. PONEMAN. We have very strong standards, Congressman, in the Department of Energy. There are some similarities between OSHA standards and DOE standards, but there are some unique DOE requirements because of our unique nuclear responsibilities for such materials as Beryllium and so forth. So we are informed by those standards, but the standards that the DOE employs are specific to the DOE complex and are unique requirements.

Mr. GREEN. You can apply both, whichever is the toughest. Obviously your standards or OSHA standards, I guess, for safety. Is there any—is national, nuclear security standards stronger than OSHA?

Mr. PONEMAN. Well, the OSHA standards, Congressman, and my colleagues may wish to join me in explaining this, apply to general industrial safety.

Mr. GREEN. Yes.

Mr. PONEMAN. And where we can apply globally recognized standards that apply to industrial safety, we do that. That is an efficient thing to do to use validated peer review standards such as OSHA. However, when there are those unique requirements that pertain to the use of Beryllium and other things that are unique to our complex, we need special DOE-tailored standards.

Mr. D'AGOSTINO. And if I could just agree with everything the Deputy Secretary said. We have, we follow DOE directives on safety. Safety is critically important, and we are inspected by independent inspection, Mr. Podonsky's organization, as well as we have our own safety inspection standards. We don't believe that OSHA broadly applied is the way to go. We believe after years of analysis and work in developing DOE directives on safety that we have the right set. It is something that requires constant vigilance, constant attention to detail as this security situation has pointed out. We really do have to continue to keep eyes on the ball here, sir.

Mr. PODONSKY. May I amplify on that, Congressman?

Mr. GREEN. Sure.

Mr. PODONSKY. The Administration made it clear that the legislation that was proposed would hinder the Secretary's ability to manage safety and security at—within the NNSA, and specifically to your question on OSHA versus the standards that we have, our standards are much stronger. In fact, the Administrator for OSHA would like to move OSHA more towards the DOE standards, but because their hazards are of not the same magnitude as ours, it is rather difficult.

Mr. GREEN. Well, and obviously I have trouble with OSHA standards. I represent an area of maybe not as—but refineries and chemical plants, and our standards, sometimes the company standards are tougher than OSHA, and I can understand that.

The testimony by the Inspector General and the GAO submitted today indicate that have been persistent safety problems at NNSA sites for the past decade. The GAO reported between 2000, and 2007, there were 60 serious accidents or near misses, including worker exposure to radiation, inhalation of toxic vapors, electrical shocks, and again, I am interested in learning what DOE and NNSA are doing to protect the workers. Is 60 violations in 7 years, particularly dealing with the type of substances that you have to do, it seems like that would be an awful lot.

Mr. PONEMAN. Congressman, when it comes to anything nuclear, even one incident is one too many.

Mr. GREEN. Yes.

Mr. PONEMAN. And I can assure you that we take gravely seriously our commitment and our responsibilities for the safety of our workers, of the neighbors of the facilities, and of the general public. We have addressed issues up, down, and sideways relating to improving our safety culture. The Secretary and I have both spent days and weeks going out to the sites, telling people they should feel free to come forward to express——

Mr. GREEN. I have one more question. Let me get—Mr. Gaffigan, your testimony states that the problem of NNSA oversight is not a matter of being excessive or overbearing but ineffective. What recommendations would you provide for the oversight to be less ineffective, and what steps can be—you report to the DOE in taking to make sure that oversight of the labs is as effective as possible?

Mr. GAFFIGAN. And I this applies to both safety and security. We have not found the problems to be the standards themselves. I think the standards are good. They are out there. They do find the problems, they do come up with good corrective action plans, and the thing that we think they fall short on over and over again, this is kind of deja vu all over again with both the safety and the security side, and we have reports going back to the early 2000s and beyond. The same issue of they identified the problem and then they come out with corrective action, and it is not sustained, and I think you found in the testimony today talking about 2008, when the first report came out, 2009, 2010, whatever these issues were floated, yes, it looks like some action was taken, but it wasn't sustained. And that seems to be the problem over and over again.

Mr. GREEN. OK. Thank you, Mr. Chairman.

Mr. STEARNS. Thank the gentleman.

I recognize Mr. Gardner, the gentleman from Colorado, is recognized for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman, and I have heard members of the committee as well as panelists before this committee describe what happened as inexcusable and as appalling, but I would also say that it has become a little bit of a theme. If you look at some of the background material that we have been given before this committee hearing and the memorandum, it talks about committee hearings that were held, a series of Energy and Commerce Committee hearings held in 1999, that talks about 15

hearings held and numerous GAO investigations requested in 2004, and 2005, and 2008, and 2009. We have heard about reports in March of 2010.

I have in my district 50 intercontinental ballistic missiles, Minutemen III, located in my district, and recently I went to F. E. Warren Air Force Base, where I viewed the preparations that they go under to monitor the sites, the missile alert facilities, and the material that they are protecting. And certainly I don't think at any point was I concerned that they were becoming numb to an alarm that was going off, because as I sat in the facility there were alarms going off because a tumbleweed blew up against an electronic surveillance barrier, and they knew where to look for that, and they certainly checked it out and verified it. And it happened multiple times a day as you can imagine on the eastern plains of Colorado, where you have wildlife, where you have tumbleweeds, where you have high wind, where you have snow that builds drifts that may cause an alert. Watching the shadows on the video monitor of the drifts to make sure that nothing was changing.

And yet we continue to see this theme that it sounds like you know what is wrong, it sounds like you have identified the problem, but I don't know that we have had the government picture in place that actually accomplishes the protections that we need of what obviously is a critical matter of national security.

And some of this, some of these questions have been asked before. Some of them have been talked about here, but I do want to follow up and do a little bit of repeating of what has happened.

And so, Mr. Friedman, Mr. Friedman, in your report, in your IG report you say that one official in NNSA was talking about how, talking about how—excuse me. Had been instructed not to evaluate and report on how the contractors were conducting business, and we talked a little bit about the contractors, whether or not they have done an adequate job deciding how to accomplish the mission. We have talked about effective management.

And so I guess the question is actually not for you, Mr. Friedman, but to Mr. D'Agostino. How do we make sure that we have the management that we need to—for a contractor to make decisions if the Federal side officials are not able to evaluate how the contractor is doing their job?

Mr. D'AGOSTINO. Mr. Gardner, that is the question is to make sure, it is my responsibility to make sure that my Federal overseers in the program understand that my expectation is that they do oversee the contractor in this high hazard, highly important, critical missions of nuclear safety and nuclear security and that we have an independent oversight structure in place to check that we are actually doing that particular thing.

In this particular case you referenced a quote I think from Mr. Friedman's report. We had clearly a situation that was unacceptable, was inexcusable, and this is why we are conducting reviews because we want to understand what happened in the translation of oversight that we have people at our site offices thinking that they cannot and should not and are not allowed to oversee the contractor in that way. So we want to track this down, we want to get this review done and General Finan's review as the Deputy Secretary had mentioned, clearly is a step towards digging beyond just

what we have been—and some of the pieces we have been talking about on specific numbers of cameras, which is important, but we want to get to that underlying thing that allows us to sustain oversight, effective oversight in the right way, and as Mr. Friedman's report said, so it in a risk-based way where our attention is based on the most, the highest, most important activities.

Mr. GARDNER. Do you carry out perimeter checks? I mean, do you carry out perhaps drills or tests that may breach a perimeter just to check for response?

Mr. D'AGOSTINO. Yes, but we clearly need to do more of these and do what——

Mr. GARDNER. How many—how often do you carry those out?

Mr. D'AGOSTINO. Those checks, right now those checks are now being ascribed every time we conduct a visit from headquarters that we are going to do that check. We are going to have federalized——

Mr. GARDNER. How often were they carried out before the incident at Y–12?

Mr. D'AGOSTINO. They were carried out on a regular basis.

Mr. GARDNER. What is a regular basis?

Mr. D'AGOSTINO. Regular basis is on a weekly basis by their protective force. We expect our contractor have a performance assurance system. They have to prove to the Federal Government, we have a contract with them, that they are checking themselves, and so they——

Mr. GARDNER. And are you reviewing those checks?

Mr. D'AGOSTINO. Yes, sir. Those checks get reviewed. The challenge is to make, is to have these checks done in such a way that they actually could test conditions on the ground, not the fact that we have a contractor knowing that something is going to happen so they are ready to go.

Mr. GARDNER. Yield back. Thank you.

Mr. STEARNS. The gentleman yields back.

The gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much, and thank you, Sister, Meghan Rice, for being here. Thank you for your actions. Thank you for your willingness to focus attention on this nuclear weapons buildup that still exists in our world and how much we need to do something to reduce it. We don't need more nuclear weapons. We need fewer nuclear weapons. We don't need more hostility with Russia. We need less hostility with Russia. We thank you. We thank you for your courage.

I went to Immaculate Conception Grammar School, Malden Catholic, Boston College, and Boston College Law School. So I went to catholic school every day for 20 years, and I am very influenced, of course, by everything that the nuns taught me. It is important that was nuns on the bus, not under the bus, which a lot of people would like for you, Sister. They think you should be punished and not praised, but what you have done is you have shown the lackness, the laxness of the security at our nuclear weapons facilities, and but you have also pointed out that we still have an out-of-control nuclear arms race with an out-of-control budget building more nuclear weapons in our own country, and for that you should

be praised, because that is ultimately what the Sermon on the Mount is all about.

And I think along Sister Simone Campbell, speaking at the Democratic Convention about the Ryan budget, that you can't build more nuclear weapons and cut Medicaid and cut Pell Grants and cut Medicare at the same time. It is not just the arithmetic doesn't add up if you say you are balancing the budget, but the morality end of it. It is just wrong, and so what you did, Sister, was just so memorable to me in pulling up all of those classrooms that I was in all those years, just hearing that message. And so I thank you for that, and I hope that the members of this committee can learn from what you are saying and what Sister Campbell is saying and perhaps just reflect that in the incredible commitment that too many members have to building more nuclear weapons when we don't have any targets anymore for those nuclear weapons.

And some people just think of the Defense budget as a jobs bill. No. It should just be what enhances our security, and if you can't justify it on that basis, you just can't maintain it because it adds to the instability on the planet.

So, Mr. Poneman, let me just go to you. The United States Enrichment Corporation is possibly the most troubled company that has a pending loan guarantee application at the Department. It is rated at below junk bond status. It has been warned that it is at risk of being delisted from the stock exchange, which prompted the USEC to warn its shareholders could be put into default on all of its debts. It lost more money last year than the entire Solyndra Loan Guarantee was worth, and despite repeated DOE bailouts totaling almost $1 billion and free uranium and other subsidies in just the past 8 months the total value of the company is only about $62 million. And despite the clear signs of impending bankruptcy, the Department requested another $100 million from Congress for USEC for fiscal year 2013.

Mr. Poneman, will the Department actually provide these funds to USEC even if USEC continues to be at risk of being delisted from the stock exchange and defaulting on all of its debts?

Mr. PONEMAN. Congressman, let me be very clear. The thing that the United States Department of Energy is focused on is maintaining a domestic source of enriched uranium so that while we still have the deterrent that we need to defend America, we can get the tritium and so forth we need——

Mr. MARKEY. I understand that, but USEC's American centrifuge project in Ohio plans to use foreign-made technology for everything from pumps to cooling systems. They have even asked from Congress to pass legislation to get favorable tariff treatment on these imports, and USEC's Kentucky facility relies on French pumps to move the enriched uranium and waste through the machines.

If DOE really believes it needs American technology to meet its tritium needs, why does it allow USEC to rely so heavily on foreign technology?

Mr. PONEMAN. To be very clear, Congressman, that is, whether there are some parts that are foreign, the technology and the intellectual property is owned by the United States of America, and the United States Department of Energy has taken every step to ensure that in the event that USEC is not able to carry of its respon-

sibilities, that we have access both to the machines and to the intellectual property to assure that our trading requirements can still be met.

Mr. MARKEY. But are you going to give them money even if they are going bankrupt?

Mr. PONEMAN. To me, to us, Congressman, the question is not a specific company and its status. The question is the capability for the Nation. We will do what we need to to make sure that we still have the deterrent that we need to defend America.

Mr. MARKEY. Well, I just disagree with that 100 percent. I just think if we are going to have a loan guarantee program and Solyndra is going to be criticized, then we have to criticize the United States Enrichment Corporation as well, and we should find a way indigenously of doing it but not subsidizing companies that are going bankrupt. It is just wrong.

Mr. PONEMAN. Congressman, to be very clear, precisely because the underwriting criteria of the loan program guarantee could not be met by USEC, the Department entered into a far different arrangement, a much more modest arrangement for research demonstration and development program, which would vouchsafe the technology stayed safe in American hands, even if the loan guarantee could not be qualified as under the underwriting criteria it could not. The program that we have in place will reduce the technical risks and reduce the financial risks if it works out, and we have very strong safeties to make sure that the U.S. taxpayer interest is well protected.

Mr. STEARNS. The gentleman's time has expired.

Mr. MARKEY. That is junk bond status.

Mr. STEARNS. The gentleman's time has expired.

The gentleman from Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Back to the subject of this hearing, I got a couple of questions. I have heard that everybody is processing reports and going over all of this. Can I assume that you all will bring a report to us as well highlighting what went wrong, what is being done to rectify that?

Mr. PONEMAN. Congressman, we not only recognize it. We embrace the oversight responsibilities of this subcommittee, and we will surely bring that to your attention.

Mr. GRIFFITH. And Mr. Chairman, I think probably the 4 years in we might want to have a revisit on this subject even if brief, even if only a brief hearing on that matter.

Thank you, Mr. Chairman.

Also, there has been talk of and I don't care who responds because several people have mentioned that there was—the debate over federalization had been going on for years, and it was being looked at again, and I am sitting here, and there may be some great reason for it, but I am new, and I am just trying to solve problems, but have we ever thought about attaching at least for the protection of the perimeter an installation of the United States Army?

Mr. PONEMAN. Congressman, the first thing that we have done in this particular instance is make sure with the force that we have and the arrangements that we have that we are safe and the mate-

rial is secure. We have already said we need to look at exactly the kinds of questions you are asking to see if it can be done better. It has been looked at many times. I do think that Mr. Gaffigan put his finger on something very important when he said whatever the organizational arrangements, and I think this is what the past GAO reports indicated, there was no substitute for strong management oversight. So whether it is a federalized force or whether it is a contracted force, there is no substitute for getting that strong direction and leadership.

Mr. GRIFFITH. Historically the United States Army seems to have done a pretty good of that.

Mr. PONEMAN. We are very proud of the U.S. Army.

Mr. GRIFFITH. That being said, Mr. Friedman, I am new to this, but my understanding is is that this has been going on for some time with various problems, and what else should we be doing as a committee to make sure that we don't have another problem 6 months, 2 years, 5 years from now, and as a part of that, you know, should we be making more site visits to see whether or not the cameras are switched on ourselves?

Mr. FRIEDMAN. Well, I will respond to your question, Mr. Griffith, but it is a little presumptuous on my part to tell the subcommittee how to conduct its oversight.

Mr. GRIFFITH. Well, I am looking——

Mr. FRIEDMAN. So I would tell you this. I think periodic hearings on these specific matters would be worthwhile. I think more site visits, boots on the ground from the subcommittee's point of view to see what is going on, comparing and contrasting from your perspective what goes on at the various Department of Energy sites and seeing if there are anomalies that you might point out, and finally, sort of the $64 question, which I don't know has been asked, is the question of resources, and there are resource issues, and perhaps, I know you are an oversight committee, but obviously you have appropriations responsibilities as well, and that might be an area in which you could focus your attention. In other words, do they have the resources to do that job, are they properly positioned to do that.

Mr. PONEMAN. I would just add, Congressman, we would welcome any and all members of the subcommittee to the site. We think that would be a very, very useful exercise and helpful.

Mr. GRIFFITH. All right. Mr. Chairman, I see no need to pile on. Everybody has said what happened was bad and we want to fix it, but I am happy to yield my time to any member who might with to have that time.

Mr. STEARNS. OK. I will take a little bit and then the gentlelady from Tennessee.

Mr. Friedman, you indicate more resources but wasn't it a case where they just didn't check the circuit breakers on one of the cameras?

Mr. FRIEDMAN. Well, I am not suggesting that the Congressional appropriation was inadequate. What I am suggesting is that in terms of maintenance, which is one of the key issues here, we were told that there were not enough maintenance individuals to take care of the backlog of existing equipment while they implemented and installed a new system. So the pie simply was not large

enough to take care of both. That is the sort of resource issue that I was referring to, and I apologize if I didn't make that clear.

Mr. STEARNS. But you would admit that checking circuit breakers doesn't require more resources, and one of the key cameras didn't—no one checked the circuit breaker. It wasn't working.

Mr. FRIEDMAN. Well, I would suggest to you, Mr. Chairman, that when somebody takes a closer look at it, it was more than a mere circuit breaker, but I am not in a position to affirm that positively but——

Mr. STEARNS. OK. The gentleman from Virginia reclaims his time.

Mr. GRIFFITH. Reclaiming my time, Mr. Chairman, I would say that the other question that I have is is that there must have been more than just one or two cameras out. Either that or these folks had some inside information. My guess is is that your entire perimeter was exposed or else they wouldn't have been able to just waltz in the way they did. Either that or they knew which cameras weren't working. It sounds like to me the whole thing was down.

And I yield back, Mr. Chairman.

Mr. STEARNS. The gentleman's time has expired.

Mr. Scalise is recognized for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you holding this hearing, and I have a number of questions, but I first want to respond to some of those comments made by the gentleman from Massachusetts. You know, first of all, to try to equate in some way building nuclear weapons to protect this country and reforming Medicaid, which is an incredibly broken system that is depriving many people of good healthcare and equating that as a moral, I have no idea what place that has in this debate. You know, maybe some people haven't been paying attention what has been going on in the world.

I mean, we just saw yesterday on the 11th anniversary of September 11 that there is turmoil in this world and especially in the Middle East. You know, not only what happened in Libya and Egypt yesterday but also you look at what is happening in Iran, you know, while some people here might want to eliminate our nuclear force and our capabilities to defend this country, Iran is currently developing and may have nuclear capabilities at this time, and there is a bipartisan group in Congress that recognized that threat, and while President Obama might not have time to meet with Benjamin Netanyahu to talk about the threat to Israel, one of our greatest allies in the world, there is a bipartisan group in Congress who do recognize that treat and support the efforts, not only of Israel to defend themselves, but of this country and the actions that we ought to be taking that we are not to address the threat of Iran, as well as the nuclear threats all around the world and the fact that we can't do it by disarming ourselves. I mean, America is the beacon of the world in large part because of our strength, and peace through strength has worked over time. It is what ended the Cold War, and yet there are some people that want to think that now that the Cold War is over, they just want to ignore history.

And so, you know, I think that history repeated itself yesterday, and those who ignore it are doomed to have it repeat itself, and we

can't let that happen, and that is why the Department of Energy has a responsibility to protect the arsenal that we have, and you know, I think what our hearing is really focusing on is what kind of job is being done. You know, I looked at the Inspector General report, and I have some questions about that.

First, I want to just open it up to the whole panel. In February the National Research Council issued a report which concluded in part, I quote, "The study committee recommends that the NNSA, Congress, and top management of the laboratories recognize that safety and security systems at the laboratories have been strengthened to the point where they no longer need special attention." This was written in February.

I want to ask if any of you all want to comment on that, and first of all, do you agree with it? I strongly disagree with that conclusion by the National Research Council, and I think what happened with this breach just 2 months ago shows that, in fact, they haven't been strengthened, but this conclusion says they are strengthened. Mr. Poneman, do you want to comment?

Mr. PONEMAN. Congressman, very important points and just briefly on your first point, that is exactly why President Obama has made clear that in our nuclear posture review that non-proliferation is the top objective, and we have been to every effort to stop Iran from obtaining nuclear weapons.

Mr. SCALISE. I would disagree. I would think if you look at the actions that this administration has taken, it has been inadequate to stop Iran from developing the capabilities that everybody that honestly looks at it, especially Israel, which is faced with the evisceration, says that they are carrying forward with. So, I mean, to say that this administration has taken actions to stop Iran from advancing their nuclear capability is just wrong.

Mr. PONEMAN. Sir, with all due respect, we have negotiated to curtail and to pull out highly enriched uranium, natural uranium that had been enriched in a facility. We are sparing no effort to stop that, but I want to go back to your NRC question about the report.

We strongly, strongly believe that continued and, in fact, enhanced vigilance in oversight is required. The job of——

Mr. SCALISE. Well, did you agree with that conclusion that security has been strengthened to the point where it no longer needs special attention? Do you agree with that conclusion or do you not?

Mr. PONEMAN. No. Security always, always needs to be——

Mr. SCALISE. OK. So you disagree.

Mr. PONEMAN. It will never be done.

Mr. SCALISE. Mr. Friedman, you did the Inspector General, you are part of the Inspector General report. What is your response to the conclusion that they had just in February?

Mr. FRIEDMAN. I disagree with that aspect of the conclusion based on our work. We treat these matters as—on our management challenge list as components of the management challenge list. While there have been some improvements and some setbacks in certain areas, we don't think their position is——

Mr. SCALISE. Thank you, and I hope that the Department looks closely at your report and some of the reports of those who were on the ground, those people that were tasked with maintaining se-

curity at this facility. I mean, it looked like a Keystone Cop operation where the officer there wasn't even paying attention to what was going on, wasn't even really securing the facility after the people who broke in came and in essence surrendered to them. They just kind of looked around, and it took a second supervisor to come before they finally took some action.

But I think it shows—and it wasn't, he wasn't the only one. I mean, there was reports that people on the—at the facility for months didn't know even how many cameras weren't even working. They had no idea what was working, what wasn't working, and some of this had been problematic for months. And so I think there was a culture there, and I don't know if that permeated at the other facilities, too, because this wasn't—Y–12 wasn't the only facility. So I don't know if this is a culture of neglect and lax security, but clearly there is a difference because as I pointed out, you know, you look at what National Research Council said. They said the security is fine, and it is not.

And so I hope that there will be real accountability and not just people reassigned, but people ought to be removed, and a new culture needs to be installed.

And with that I yield back the balance of my time.

Mr. STEARNS. Thank the gentleman. I believe we have had a very good attendance by the subcommittee. I want to thank the witnesses for their patience and participation.

I ask unanimous consent that the contents of the document binder be introduced into the record and to authorize staff to make any appropriate redactions.

Without objection, so ordered. The documents will be entered into the record with any redactions that staff determines are appropriate, and I remind all members that at 12:30 we are going to have a meeting and a briefing, and all members on the subcommittee are invited. It is over in the visitor's center, and you can talk to staff if you want the actual room number.

And, again, we want to thank our witnesses, and the subcommittee is adjourned.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Opening Statement of the Honorable Fred Upton
Subcommittee on Oversight and Investigations
Hearing on "DOE's Nuclear Weapons Complex: Challenges to Safety, Security, and Taxpayer Stewardship"
September 12, 2012
(As Prepared for Delivery)

The Department of Energy is responsible for ensuring that some of the world's most dangerous materials are handled safely and securely. This responsibility is not without its challenges.

We were reminded of these challenges with the alarming security failures at the Y-12 National Security Complex this past July. This site was considered the Fort Knox for the nation's highly enriched uranium, and long considered the best of the best when it came to security. Yet in the early morning hours of July 28, the site showed dramatic breakdowns across the board – guard force response, security equipment, communications – when put to the test by three protesters who gained access to a secure area and had time to deface the building housing the facility's most volatile substance – highly enriched uranium.

Fortunately, the security breach was not by a terrorist organization, but it revealed alarming weaknesses that raise questions about current federal oversight of contractor security at this site and throughout the nuclear weapons complex.

Sadly, we have seen these problems before. This committee knows, perhaps better than any committee in Congress, the history of safety and security failures in the nuclear weapons complex. Over the past two decades, we have worked together in a bipartisan fashion to spotlight these failings – at the weapons labs and at the weapons production sites -- and to urge necessary reforms. Strong safety and security oversight has been a consistent and central theme of this committee's work and the focus of many of our hearings and related investigations.

There are serious management problems in the nuclear weapons complex, demonstrated by alarming cost overruns and delays that put literally billions of taxpayer dollars at risk. It is clear from our work that something needs to be done.

But it is also clear that, in order to identify how best to ensure strong taxpayer stewardship, and maintain safety and security in these most dangerous facilities, that we diagnose the problems accurately, and come up with solutions that do not diminish the security and safety advances of the past decade. Indeed, today, everyone is being asked to do more with less; however, we cannot institutionalize less oversight and expect more safety and security.

I believe that effective independent oversight of the department's critical missions is essential to meeting our national security needs and the legacy of the Cold War weapons programs. Reducing independent oversight would undermine the responsibility our government has to American taxpayers to achieve these critical national security objectives. Without it, success in these areas will be more difficult, not less.

This committee will continue its oversight of the nuclear weapons enterprise and DOE management, in order to identify the best avenues for reform in the interest of taxpayers, safety, and national security.

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Department of Energy
Washington, DC 20585

February 13, 2013

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:

On September 12, 2012, Daniel B. Poneman, Deputy Secretary, testified regarding the "DOE's Nuclear Weapon's Complex: Challenges to Safety, Security, and Taxpayer Stewardship."

Enclosed are the answers to 16 questions that were submitted by former Chairman Cliff Stearns, and Representatives Lee Terry and Michael C. Burgess to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

Christopher E. Davis
Deputy Assistant Secretary
for Congressional Affairs
Congressional and Intergovernmental Affairs

Enclosures

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

1. The NNSA Act constrains the Secretary's authority, direction, and control of the NNSA, restricting the delegation of his authorities to manage this fundamental element of the Department only to the Deputy Secretary.

Q1a. Given that the Secretary is responsible both managerially and politically for all the Department's actions, how does this statutory restriction impact the Secretary's ability to supervise and manage effectively the NNSA?

A1a. If implemented effectively, the statutory provisions of the NNSA Act that limit the delegation of authorities by the Secretary and authorize the Secretary to direct DOE officials who are not in NNSA to review NNSA programs and activities and make recommendations to the Secretary provide the Secretary the ability to successfully supervise and manage the NNSA.

Q1b. How does this provision impact the ability for the Secretary to be adequately and correctly advised with respect to NNSA matters if the Secretary's staff is prohibited or inhibited from gathering information directly and independently from NNSA staff?

A1b. Neither this provision, nor any other provision of the NNSA Act prohibits or inhibits the sharing of information between, or within, the Department and/or the Administration. There are numerous instances of coordination, including gathering, sharing, and responding to information, that occur on a routine and daily basis between the two organizations.

Q1c. What would be the impact of removing this limitation on the Secretary's delegation of authority?

A1c. If this limitation were removed, the Secretary would have additional flexibility to delegate authority to accomplish the diverse missions of the Department, although the National Nuclear Security Administration could lose some of the high level direction (i.e., Secretary or Deputy Secretary) in effect under the NNSA Act.

Q1d. Are there any other arrangements in a Cabinet department of the executive branch in which the Cabinet Secretary is constrained from delegating his legal authorities to subordinates or from directing activities of a subordinate organization within the Department? If so, what are they?

A1d. It should be noted that the inclusion of a "semi-autonomous" organization within a Cabinet department is unique to the Department of Energy. Nevertheless, there are other arrangements whereby a Cabinet Secretary is constrained from delegating his legal authorities to subordinates. Our research revealed at least the following arrangements: Section 509 of Title 28 of the United States Code (U.S.C.) does exclude certain Departmental functions from the "functions" of the Attorney General. This indirectly limits the Attorney General's authority to delegate "any function of the Attorney General," as authorized in 28 U.S.C. 510. In addition, Section 50.102-1 of the Federal Acquisition Regulations (FAR) also constrains any and all agency heads, who are subject to the FAR, from delegating their authorities under Pub. L. 85-804 and E.O. 10789.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q2. It appears from the Inspector General's report on the Y-12 incident that the Management and Operations contractors at the Y-12 site had assumed responsibility for risk analysis and assurance that the security systems would work.

Q2a. Who provided the authority to the contractor to assume this responsibility?

A2a. The DOE directives approved by the Secretary or the Deputy Secretary assigns risk management decision responsibilities to the Program Offices. While the contractors are delegated the responsibility for conducting vulnerability assessments associated with the protection of Special Nuclear Materials (SNM) and nuclear weapons. Risk acceptance authority is reserved for Federal managers. However, I signed both the March 16, 2010 Safety and Security Reform Plan and the subsequent revision of DOE Order 470.26, now numbered Order 227.1, that removes the requirement for contractor corrective action plans to be government approved when security deficiencies are appraised. Subsequent to that at Y-12, DOE's oversight policy and NNSA Policy Letter NAP 70.2, approved by the NNSA Administrator *Physical Protection* allowed for broad decision-making authority for contractors, including the ability to make inherently governmental risk decisions without effective Federal review.

Q2b. Was the authority transferred formally, in a document? Would you please supply the document to the Committee?

A2b. The contractor Vice President for Safeguards, Security and Emergency Management was granted CSA authority by the Federal Y-12 Site Office in September 2006, citing the provisions of a DOE directive that severely limit contractor authorities regarding the inherently governmental function of risk acceptance. However, in 2011, DOE Order 227.1 and NAP 70.2 decreased requirements for federal performance assurance and

significantly expanded contractor authorities, without clearly identifying their limits. YSO did not publish any amendments to its original delegation of contractor CSA authority, thus creating ambiguity that allowed the B&W CSA to make inherently governmental decisions regarding ongoing upgrades of the Y-12 protection systems.

Q2c. Did the Secretary approve delegation of this risk to the contractor? And if not, should he have approved this delegation?

A2c. In Delegation Order No. 00-003.00B to the Under Secretary for Nuclear Security, the Secretary of Energy delegated his authority for "Security Activities." In turn, the Administrator further delegated Sections 1.1 through 1.5 to the Chief, Defense Nuclear Security. The Chief, Defense Nuclear Security has further delegated this authority to site-level Federal managers for implementing physical security programs to the facilities under their purview. NNSA Administrative Policies on Physical Protection (NAP 70.2) and Information Security (NAP 70.4) identify specific areas where Contractor Cognizant Security Authorities could exercise authority. However, those authorities are risk-based requiring Federal acceptance for high risk assets.

Q2d. Do other sites have this same delegation? If so, please identify them?

A2d. Yes. NNSA Administrative Policies on Physical Protection (NAP 70.2) and Information Security (NAP 70.4) identify specific areas where Contractor Cognizant Security Authorities could exercise authority.

The Federal Cognizant Security Authority has final approval responsibility for risk analysis and assurance that the security systems are effective.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q3. Do you agree with the assessment that productivity and cost overruns are a result of burdensome agency oversight?

A3. No. There is no objective evidence to support the assessment that productivity and cost overruns are the result of burdensome agency oversight. The NNSA operates within a framework of legislative authorities and responsibilities and in partnership with our Contractors for mission success. The recent unacceptable incident at Y-12 demonstrates that the NNSA has fallen short of our own expectations and we face continuing challenges in our goal of continuous improvement.

Q3a. What is the root cause of productivity and cost overruns in weapons complex projects?

A3a. There is no single root cause for cost overruns in weapons complex projects. The very nature of NNSA's projects are that they are state of the art, complex, and executed to provide facilities for high hazard, high consequence activities. Recognizing these challenges, NNSA has made the following organizational changes to provide better centralized control of programs and projects and to provide better accountability: (1) established the NNSA Office of Acquisition & Project Management (APM) to improve our execution of major construction projects; (2) established the Office of Infrastructure and Operations to work towards operational excellence and infrastructure recapitalization; (3) streamlined the Office of Defense Programs to focus on core missions of Life Extension Program (LEP), surveillance, and weapon-related Research and Development, Trials and Assessment (RDT&A); (4) revitalized NNSA's Office of Management and Budget to drive towards excellence in cost analysis and budgeting; (5) redesigned Field Organizations to align the organization and provide effective

Management and Operating (M&O) oversight; and (6) implemented the Strategic Performance Evaluation Plan that contractually integrates performance outcomes. Large scale, unique nuclear projects have inherent risks to scope, schedule and cost. NNSA will continue to sharpen its risk analysis in order to inform sound resource decisions that support national program priorities.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

4. If the NNSA moved to a performance based oversight model, essentially allowing for self-regulation/oversight of high consequence but low probability accidents, how could the Secretary of Energy fulfill his responsibilities for ensuring safe and secure operations at DOE?

   a. What role would Health, Safety and Security (HSS) play in this effort?

A4. The Department of Energy-wide (DOE) and National Nuclear Security Administration's (NNSA) oversight models overlap and currently consist of a combination of elements that are performance-based and transaction-based. Under these models, the Office of Health, Safety and Security (HSS) conducts independent (i.e., independent of all line management functions) oversight of DOE and NNSA Federal and contractor performance in the areas of safety and security. Having HSS independent oversight of NNSA safety and security programs is critical for the Secretary of Energy to make independent safety and security performance judgments related to NNSA operations, including in the areas of nuclear safety and nuclear security.

The current DOE regulatory model provides the NNSA Administrator the authority to take enforcement actions and issue civil penalties against NNSA contractors that violate the Department's worker safety, nuclear safety, and classified information security regulations. (HSS implements these functions on behalf of the Secretary for non-NNSA contractors). HSS's role with respect to NNSA is to conduct investigations and make recommendations to the NNSA Administrator regarding enforcement actions. Any regulatory reform needs to provide certainty into whether existing Departmental safety or security regulation applies to NNSA or its contractors, or whether the Secretary or the

NNSA Administrator has the authority to impose civil penalties for violations of those regulations.

As indicated in the Statement of Administration Policy (SAP) on the House NDAA (H.R. 4310), the Administration strongly opposes provisions that severely hamper external, independent oversight by the Defense Nuclear Facilities Safety Board; move regulatory authority from independent offices and agencies to the NNSA Administrator; require a weaker standard of contractor governance, management, and oversight; and eliminate DOE's flexibility to determine the appropriate means of assessing the unique risks that it confronts in its facilities. By lowering safety standards for the nuclear weapons complex and reducing requested funding for health, safety, and security, these provisions would weaken protections for workers and the general public.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q5. NNSA has initiated the development of separate policies from DOE for safety and security. Do you support the development of a two-track system of policy and oversight within DOE?

A5. NNSA has in some cases developed separate security directives from DOE; they did not develop separate safety directives. To achieve one unified security policy for DOE, including NNSA, I have directed NNSA to work with HSS to make recommendations for any necessary updates to Departmental directives to provide sufficient clarity to establish the security objectives that must be met by all elements of the Department. NNSA would then provide direction to its subordinate elements that would provide approved methodologies and procedures to ensure that the Departmental objectives are met. DOE's oversight role in such an environment is to focus on demonstrating, primarily through rigorous performance testing, that site programs, as implemented, do meet DOE safety and security objectives.

Q5a. Do you or the Secretary review and sign off on these NNSA policy requirements?

A5a. We review them when final and, if the Secretary or I have an issue with them, we inform the Administrator who then must make changes to address our concerns or withdraw the NNSA policy requirement.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q6. During the hearing, questions were raised about federalizing the protective force or putting the U.S. Army in charge of perimeter protection at Y-12. To the extent federalization or military guard force has been examined by the Department in recent years, what has the Department determined?

A6. Since the early 1990s, the department has intermittently considered federalization because of a variety of security challenges, often involving actual or potential work stoppages by contractor protective force union employees. Over the last ten years, several studies have been conducted which resulted in various recommendations. In one such study, the Department of Energy (DOE) performed a review in 1992 and concluded there was no clear evidence that federalization of protective forces would significantly save costs or improve security. In contrast, a 2004 DOE study group, examining ways to strengthen DOE's security posture after September 11, 2001, recommended federalization to better support tactical responses and to promote uniform, high-quality security across sites. The Department did not implement the recommendation due to the more urgent priority of immediately improving protective force capabilities within existing organizational and contractual arrangements.

In January 2009, National Nuclear Security Administration (NNSA) and the Office of Health, Safety and Security (HSS) issued a report to the Deputy Secretary regarding whether NNSA sites would be better served by contractor or federal protective forces. NNSA and HSS concluded that the major benefits of federalization could be achieved through the existing contractual model. Also in 2009, partly in response to a union coalition calling for federalization, NNSA and DOE's HSS began focusing on protective force initiatives to address some of the goals that federalization was meant to accomplish.

In 2010, the Government Accountability Office (GAO) published report #10-275, NUCLEAR SECURITY: DOE Needs to Address Protective Forces ' Personnel Issues, which summarized many of the previous studies and concluded once again that a definitive decision regarding federalization versus continued contracting of protective force services for DOE's sites could not be reached; however, the GAO suggested that the issue be revisited if implementation of recommendations from an enhanced career longevity and retirement options study failed to bring positive results.

The implementation plan for the enhanced career longevity and retirement options study was signed by the Secretary and provided to Congress in January 2011.

In December 2012, Secretary Chu asked a panel comprised of Norman Augustine, C.D. Alston, and Richard Meserve for advice on Y-12 security. Two out of the three recommended federalizing the workforce. These recommendations are being considered along with other DOE staff inputs as DOE considers the longer-term response to both security at Y-12 and the broader range of security issues at the nuclear enterprise.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q7. Why is it important to allow foreign nationals to visit or work at the National Weapons Laboratories?

A7. The reason why it is important to allow certain foreign nationals to visit or work at the nuclear weapons laboratories is to promote diplomacy and to promote cooperative educational and scientific advancement. Spending some time visiting or working at a laboratory builds international confidence and transparency. Since the Manhattan Project, certain foreign nationals have visited or worked at the nuclear weapons laboratories, making important contributions. Congressionally approved treaties, such as the 1958 U.S./UK Mutual Defense Agreement (MDA), allow for technical information exchange in certain areas of atomic energy. These exchanges facilitate the development of defense plans, evaluation of adversary capabilities, development of nuclear delivery systems, and the research, development and design of military reactors, all of which enhance U.S. nuclear defense. While certain security-cleared UK individuals do have access to restricted areas in furtherance of their work under the MDA exchanges, the majority of foreign nationals working at the labs have no access to restricted areas. In addition, NNSA invites foreign nationals to its national weapons laboratories in order to further the organization's mission to strengthen the nonproliferation regime and enhance the security of nuclear materials and facilities around the world. NNSA and the laboratories provide training programs in the area of nuclear security. These training programs strengthen nuclear security practices at facilities around the world, and provide an ideal environment for sharing effective tactics, techniques, and procedures with our foreign counterparts. This process adheres to security clearance and export control review procedures in order to ensure that all participants are properly vetted.

Finally, the nuclear weapons laboratories, like all of the laboratories in the DOE Complex, are science laboratories. While a significant portion of that science is dedicated to the national defense, scientists at the nuclear weapons laboratories are world leaders in other diverse disciplines including, but not limited to, space and astronomical science, nuclear energy research, materials science, environmental science, geology, chemistry, renewable energy research, biological sciences, advanced computing applications, and other technical areas. Cutting edge science is performed collaboratively and necessarily with specialists from around the world.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q8. Given the United States Enrichment Corporation's (USEC) public statements of their intent to cease operations at the gaseous diffusion plant in Paducah, Kentucky, what planning has DOE done to prepare for any potential transition of the facility from USEC's control to DOE's?

A8. Although USEC has informed DOE of the "potential" return of the Paducah gaseous diffusion plant (GDP) facilities, USEC has not yet provided the required formal notification under the terms of the USEC lease with DOE of their intent to return the leased facilities. Depending on USEC's commercial need to keep a portion of the GDP for certain activities and the time required by USEC to successfully meet its requirements under the Lease, returning the GDP to DOE (which involves coordination with the Nuclear Regulatory Commission) will take USEC quite some time. DOE is making prudent efforts to plan for the eventual return of the plant from USEC and for the anticipated responsibilities for the surveillance and maintenance followed by the deactivation and decommissioning. In the meantime, DOE is relying heavily upon its successful USEC GDP transfer experience at the Portsmouth site in Ohio, completed in 2011, and lessons learned from the Oak Ridge Gaseous Diffusion Plant decommissioning in its plan for the return and shutdown of the Paducah GDP.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q9. What resources would be required for the transition? Has DOE incorporated those resource requirements into its budget process?

A9. Although USEC has not yet provided the required formal notification under the terms of the USEC lease with DOE of their intent to return the leased facilities, DOE has identified a range of costs to support transition activities over the next several years and is incorporating those costs into the budget process.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q10. How will the transition from NRC regulation to DOE operation change the conduct of security at the site and number of security employees? How will those changes impact the site's security employees?

A10. USEC has not provided the required formal notice to DOE regarding its intent to return the leased facilities to DOE or its plans to accomplish the turnover requirements as required by the lease. It would be premature to identify any specific impact to the site's security posture or personnel with the specifics of the transfer still unknown. DOE will conduct a security risk assessment once DOE knows when the facility will be returned and can establish the condition of the facility upon its return. This security risk assessment will consider the status and condition of the nuclear materials and classified information at the GDP in order to determine what the appropriate levels of security necessary to ensure protectiveness and comply with applicable regulations.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

B&W Response

Q1. Please share with the committee a copy of the B&E response to the show cause letter.

A1. Copy of the response was provided to the Committee.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q2. The show cause letter did not raise the issue of whether or not B&W and G4S fulfilled their responsibilities to keep NNSA informed of issues. Did they?

A2. No, they did not. B&W and G4S are required by contract and Departmental directives to implement effective contractor assurance systems and performance assurance programs to measure the effectiveness of their security program. Those programs are intended to promote continuous improvement, but also to inform and assure NNSA. However, self-assessments conducted by B&W and G4S often contained insufficient information regarding security program implementation, failed to identify issues, or lacked analyses to support the conclusions. Consequently, the contractors' reports did not accurately inform NNSA about the effectiveness of existing security programs to support management decisions regarding future security activities.

Q2a. Why did it take so long for security system vulnerabilities to become known outside the contractor community?

A2a. In addition to the weaknesses in contractor assurance systems, numerous examples of inadequate Federal oversight were evident. Oversight and assessment activities by the former Y-12 Site Office did not effectively evaluate all safeguards and security areas, so the ensuing analysis provided an inadequate basis that Departmental assets were protected at the required levels. Further, elements of the NNSA Management systems Assurance Program performance measures, used by NNSA to help influence decisions regarding contractor award fees, did not accurately depict actual contractor performance. Some delays can be attributed to NNSA management inappropriately applying the Assurance Program with the belief that they could not intervene to prompt the contractor

to reduce maintenance backlogs. Collectively, weaknesses in contractor, site office, Defense Nuclear Security, and DOE oversight and assurance systems essentially blinded DOE and NNSA senior management to the overall health of the protection program at Y-12 and as to early indicators of problems that, if corrected, might have mitigated the security breach.

Q2b. Was the withholding of information deliberate?

A2b. Actions, or lack thereof, taken by the contractor(s) stemmed from a lack of awareness of the seriousness and systemic nature of the issues. Weaknesses in contractor assurance systems and the overly broad delegation of authorities to and assumption of authority by the contractor exacerbated the poor flow of meaningful performance information to NNSA.

Q2c. Was the security budget recently reduced for Y12? Was the security program in deliberate reduction for cost or other reasons?

A2c. Yes. Y12 conducted vulnerability analyses using the draft graded security protection policy that proposed changes as a result of a new threat statement. Based on the analyses, NNSA and B&W identified several positions that could be reduced resulting in a decrease to the security budget beginning in FY13. Recent reviews have identified a pervasive perception on the part of site personnel that the overriding priority for security at Y-12 was to cut its costs, often to the detriment of prudent security strategies.

Q2d. Was the breakdown within the on-site federal management office?

A2d. There was a culture of harmonization and collaboration within DOE that included an overconfidence of actions being taken. Based on direction from the NNSA Defense Nuclear Security, the plan for reductions and operations of the Site were viewed as appropriate. Additionally, there were separate contracts direct to the Site office to include B&W Y12, the M&O contractor; G4S, the PF services contractor; and PSI, the personnel security contractor. This structure fostered a separation of duties and lack of a systems approach. Communications were fractured within the Y12 Site Office, between the federal and contractor personnel and the contractors themselves. As a result, the federal staff spent considerable time focusing on integration of the work processes rather than evaluation of the program as a whole.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q3. In the hearing, Mr. Poneman stated that the show cause letter, "...is the first step to our potentially terminating the contracts for both the site contractor and its security subcontractor."

a. What are the succeeding steps?
b. If you do end up terminating them for cause, say like you did with the M&O contractor at Rocky Flats, would you consider this ample justification to make a sole source award to a new contractor?
c. Describe your contingency plan for this possibility?

A3. B&W delivered its response to the show cause letter and it is being reviewed. If it is determined that a termination for cause is warranted, NNSA will notify B&W Y-12, LLC of the decision and a timeline for transition of operations to the successor contractor will be provided. Should NNSA determine that termination for cause is appropriate, the work at Y-12 can be transitioned to the successor contractor at any time after the date of contract award in accordance with the terms of the successor contract.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q4. You have elected, going ahead, to forbid the new M&O to subcontract security. Is your decision based on best practices, budget, or to improve security at Y12?

A4. The decision to require that security be performed by an M&O team member was made to ensure that NNSA will have direct line authority and communication with security management and personnel through the single prime contract. This approach may improve security by making it easier for NNSA staff to monitor security performance of its one prime contractor, to hold the contractor accountable and to more efficiently effectuate any changes in security that may become necessary in the future.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q5. You have chosen not to receive proposals that were due on 10 August for the new PF contract. Why? Would it have cost the government anything to look at these proposals for a new solution to the security mess at Y12?

A5. After revisiting its requirement, and in light of the incident at Y-12, NNSA determined that a single, integrated security posture is optimal for this Category 1, Special Nuclear Material protection and therefore, added protective force requirements to the solicitation for the management and operations of the Nuclear Production sites. Concurrently, the PF solicitation was amended to remove that same work. The government has a responsibility to notify offerors if a requirement is substantially changed or is no longer valid. Removing NNSA requirements from the PF solicitation is a substantial change, and therefore, an amendment to the solicitation was issued and communicated.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q6. Does NNSA have the civil service expertise to oversee the challenges of transition to a new security regimen and ensuring that the M&O contractor establishes and executes a more rigorous security program?

A6. There is limited federal civil service expertise to oversee security. The report on NNSA Organization and Oversight which resulted from the study led by Brigadier General Finan will provide more details on an assessment process for overseeing the implementation of the M&O contractor's safeguards and security program.

Q6a. Please provide the committee with a list of the Federal staff who will oversee the implementation of the new security program at Y-12 and Pantex, their present civil service position titles and GS / SES grades, and their duty station locations.

A6a. NNSA has provided this information as requested to the Committee staff.

Department of Energy
Washington, DC 20585

February 15, 2013

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:

On September 12, 2012, Daniel B. Poneman, Deputy Secretary, testified regarding the "DOE's Nuclear Weapon's Complex: Challenges to Safety, Security, and Taxpayer Stewardship."

Enclosed are the answers to 10 questions that were submitted to Thomas P. D'Agostino by former Chairman Cliff Stearns, and Representatives Lee Terry and Michael C. Burgess to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

Christopher E. Davis
Deputy Assistant Secretary
for Congressional Affairs
Congressional and Intergovernmental Affairs

Enclosures

QUESTION FROM REPRESENTIVE CLIFF STEARNS

Q1. As Administrator of NNSA, do you have the autonomy needed to effectively and efficiently manage and lead the nuclear weapons enterprise?

A1. Yes, NNSA was established as a semi-autonomous agency. I have the necessary autonomy to effectively and efficiently manage and lead the NNSA.

- Our objective is to deliver on missions safely and securely across the complex. Safety and security are embedded in the execution of our job and in our culture. It is not a trade-off of safety vs. mission.
- Oversight is not overlapping or duplicative; the line and independent efforts are complementary.
- There is a process within Department of Energy (DOE) to resolve differences in views between Office of Health, Safety and Security (HSS) and NNSA, the Secretary makes the final decision.

Q1a. If not, what authorities do you need to carry out your mission?

N/A

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q2. NNSA has a history of management challenges in the area of safety and security, and NNSA sites continue to experience performance deficiencies.

a. Do you believe the NNSA needs its own authority to set new and different nuclear safety requirements and standards from DOE's standards?

b. If so, would you please elaborate?

A2. Under existing statutory authorities, NNSA already has the authority to set policy (which includes requirements) subject to the disapproval of the Secretary (i.e., only the Secretary could overrule an NNSA-issued policy). NNSA also is fully engaged in the DOE directives system. Under that system, NNSA provides input to and in some cases authors DOE directives that are applicable to NNSA and, in some cases, other DOE organizations. Under the DOE Directives system, a provision exists for NNSA and other DOE elements to write supplemental directives, so long as they do not conflict with DOE directives. Also, the Directives system provides NNSA (at the Secretarial Officer level) with unilateral authority to write exemptions to DOE directives and DOE regulations where necessary to address NNSA issues. Through the existing directives system provisions, NNSA has the ability to non-concur on new or revised requirements, if needed, to elevate issues to the Secretary. NNSA uses all of these tools effectively to ensure that NNSA's needs are met by the DOE directives and regulations. While there may be disagreements during the development and revision of requirements the exchange generally results in a synergy that produces superior products than would exist without the full engagement of NNSA and its partners in the broader DOE. In addition, NNSA has the authority to establish requirements independently from DOE, and has exercised that authority.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q3. What role does the Secretary's Office of Health, Safety and Security (HSS) play in assisting the NNSA achieve its mission?

A3. NNSA is structured to function as a semi-autonomous agency and is uniquely responsible and accountable to achieve its mission. The inherently federal health, safety and security functions that NNSA requires to execute its vital national security mission reside in NNSA. Beyond NNSA's own capabilities, NNSA and the Secretary benefit from the enhanced capabilities that HSS provides in supporting NNSA. These capabilities include three discrete functions. First, HSS, in collaboration with Central Technical Authorities and line management, is responsible for the development of Department of Energy (DOE) nuclear safety policy, Federal Rules, Orders, and the associated standards and guidance, as well as for reviewing safety issues complex-wide. The second HSS function is to develop and assist in the implementation of safeguards and security programs and policies that provide protection to national security and other vital national assets entrusted to DOE. The third function is to conduct independent oversight that is independent from line management and to provide support in administering regulatory enforcement of NNSA contractors. The manifestations of these three HSS functions are as follows: (1) HSS independently and regularly evaluates contractor and Federal safety and security performance and recommends needed improvements. (2) HSS conducts enforcement investigations in the areas of nuclear safety, worker safety and information security, for contractor violations of Departmental regulations in those areas and makes recommendations on enforcement actions to the NNSA Administrator for action. The independence of HSS, which reports directly to the Office of the Secretary, affords HSS the autonomy to exercise its oversight role without potential conflicts of interest

with those line managers who are subject to its oversight. In summary, the HSS functions and their manifestations collectively support NNSA in executing its mission in a more effective manner and provide a venue for coordinating health, safety and security matters across the DOE in consistent ways.

QUESTION FROM REPRESENTATIVE CLIFF STEARNS

Q4. Do you believe available evidence supports removing the Secretary's independent oversight from either NNSA or its contractors?

A4. No. Both Line and Independent oversight have been instrumental in identifying issues that could have adversely impacted the NNSA mission such as cost or schedule overruns of major projects. NNSA accomplishes our work through a supporting partnership with our Contractors for mission success. A critical element of the partnership is the ability of our Contractors to manage innovatively and deliver program results in a safe, secure, efficient, compliant and ethical manner. We continue to improve upon performance-based oversight by using a graded approach consistent with associated risks and our Contractor's demonstrated performance. However, not only does the NNSA maintain our Federal responsibility to exercise oversight to sustain a strong self-regulatory posture we also rely on the Department's independent oversight of our NNSA projects and programs to provide an unbiased opinion and a validation of the quality of our Line oversight process. As a learning organization, we incorporate lessons learned from both internal and independent oversight reports into our processes to promote continuous improvement in the management of our activities as we balance requirements, risks and resources.

Q4a. Can you provide examples of independent oversight impeding NNSA's mission, including delays and cost-overruns in major NNSA construction projects?

A4a. There are no examples.

Q4b. In any such examples, were the oversight finding invalid?

A4b. There are no examples.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

B&W Response

Q1. Please share with the committee a copy of the B&E response to the show cause letter.

A1. Copy of the response was provided to the Committee.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q2. The show cause letter did not raise the issue of whether or not B&W and G4S fulfilled their responsibilities to keep NNSA informed of issues. Did they?

A2. No, they did not. B&W and G4S are required by contract and Departmental directives to implement effective contractor assurance systems and performance assurance programs to measure the effectiveness of their security program. Those programs are intended to promote continuous improvement, but also to inform and assure NNSA. However, self-assessments conducted by B&W and G4S often contained insufficient information regarding security program implementation, failed to identify issues, or lacked analyses to support the conclusions. Consequently, the contractors' reports did not accurately inform NNSA about the effectiveness of existing security programs to support management decisions regarding future security activities.

Q2a. Why did it take so long for security system vulnerabilities to become known outside the contractor community?

A2a. In addition to the weaknesses in contractor assurance systems, numerous examples of inadequate Federal oversight were evident. Oversight and assessment activities by the former Y-12 Site Office did not effectively evaluate all safeguards and security areas, so the ensuing analysis provided an inadequate basis that Departmental assets were protected at the required levels. Further, elements of the NNSA Management systems Assurance Program performance measures, used by NNSA to help influence decisions regarding contractor award fees, did not accurately depict actual contractor performance. Some delays can be attributed to NNSA management inappropriately applying the Assurance Program with the belief that they could not intervene to prompt the contractor

to reduce maintenance backlogs. Collectively, weaknesses in contractor, site office, Defense Nuclear Security, and DOE oversight and assurance systems essentially blinded DOE and NNSA senior management to the overall health of the protection program at Y-12 and as to early indicators of problems that, if corrected, might have mitigated the security breach.

Q2b. Was the withholding of information deliberate?

A2b. Actions, or lack thereof, taken by the contractor(s) stemmed from a lack of awareness of the seriousness and systemic nature of the issues. Weaknesses in contractor assurance systems and the overly broad delegation of authorities to and assumption of authority by the contractor exacerbated the poor flow of meaningful performance information to NNSA.

Q2c. Was the security budget recently reduced for Y12? Was the security program in deliberate reduction for cost or other reasons?

A2c. Yes. Y12 conducted vulnerability analyses using the draft graded security protection policy that proposed changes as a result of a new threat statement. Based on the analyses, NNSA and B&W identified several positions that could be reduced resulting in a decrease to the security budget beginning in FY13. Recent reviews have identified a pervasive perception on the part of site personnel that the overriding priority for security at Y-12 was to cut its costs, often to the detriment of prudent security strategies.

Q2d. Was the breakdown within the on-site federal management office?

A2d. There was a culture of harmonization and collaboration within DOE that included an overconfidence of actions being taken. Based on direction from the NNSA Defense Nuclear Security, the plan for reductions and operations of the Site were viewed as appropriate. Additionally, there were separate contracts direct to the Site office to include B&W Y12, the M&O contractor; G4S, the PF services contractor; and PSI, the personnel security contractor. This structure fostered a separation of duties and lack of a systems approach. Communications were fractured within the Y12 Site Office, between the federal and contractor personnel and the contractors themselves. As a result, the federal staff spent considerable time focusing on integration of the work processes rather than evaluation of the program as a whole.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q3. In the hearing, Mr. Poneman stated that the show cause letter, "...is the first step to our potentially terminating the contracts for both the site contractor and its security subcontractor."

a. What are the succeeding steps?

b. If you do end up terminating them for cause, say like you did with the M&O contractor at Rocky Flats, would you consider this ample justification to make a sole source award to a new contractor?

c. Describe your contingency plan for this possibility?

A3. B&W delivered its response to the show cause letter and it is being reviewed. If it is determined that a termination for cause is warranted, NNSA will notify B&W Y-12, LLC of the decision and a timeline for transition of operations to the successor contractor will be provided. Should NNSA determine that termination for cause is appropriate, the work at Y-12 can be transitioned to the successor contractor at any time after the date of contract award in accordance with the terms of the successor contract.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q4. You have elected, going ahead, to forbid the new M&O to subcontract security. Is your decision based on best practices, budget, or to improve security at Y12?

A4. The decision to require that security be performed by an M&O team member was made to ensure that NNSA will have direct line authority and communication with security management and personnel through the single prime contract. This approach may improve security by making it easier for NNSA staff to monitor security performance of its one prime contractor, to hold the contractor accountable and to more efficiently effectuate any changes in security that may become necessary in the future.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q5. You have chosen not to receive proposals that were due on 10 August for the new PF contract. Why? Would it have cost the government anything to look at these proposals for a new solution to the security mess at Y12?

A5. After revisiting its requirement, and in light of the incident at Y-12, NNSA determined that a single, integrated security posture is optimal for this Category 1, Special Nuclear Material protection and therefore, added protective force requirements to the solicitation for the management and operations of the Nuclear Production sites. Concurrently, the PF solicitation was amended to remove that same work. The government has a responsibility to notify offerors if a requirement is substantially changed or is no longer valid. Removing NNSA requirements from the PF solicitation is a substantial change, and therefore, an amendment to the solicitation was issued and communicated.

QUESTION FROM REPRESENTATIVES LEE TERRY AND MICHAEL BURGESS

Q6. Does NNSA have the civil service expertise to oversee the challenges of transition to a new security regimen and ensuring that the M&O contractor establishes and executes a more rigorous security program?

A6. There is limited federal civil service expertise to oversee security. The report on NNSA Organization and Oversight which resulted from the study led by Brigadier General Finan will provide more details on an assessment process for overseeing the implementation of the M&O contractor's safeguards and security program.

Q6a. Please provide the committee with a list of the Federal staff who will oversee the implementation of the new security program at Y-12 and Pantex, their present civil service position titles and GS / SES grades, and their duty station locations.

A6a. NNSA has provided this information as requested to the Committee staff.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

October 17, 2012

Mr. Mark E. Gaffigan
Managing Director
Natural Resources and Environment Team
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Gaffigan:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, September 12, 2012, to testify at the hearing entitled "DOE's Nuclear Weapon's Complex: Challenges to Safety, Security, and Taxpayer Stewardship."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, October 31, 2012. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Nick.Abraham@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Diana DeGette, Ranking Member,
Subcommittee on Oversight and Investigations

Attachment

QFR RESPONSES NNSA HEARING

The Honorable Cliff Stearns

1. This past February, The National Research Council issued a report which recommended, in part: "The study committee recommends that the NNSA, Congress, and top management of the Laboratories recognize that safety and security systems at the Laboratories have been strengthened to the point where they no longer need special attention ."

1a. Do you agree that safety and security systems at the Laboratories no longer need special attention? Why and why not?

We disagree with this statement, given the safety and security hazards present at most NNSA sites. As we testified in September 2012, long-standing DOE and NNSA management weaknesses have contributed to persistent safety problems at NNSA's national laboratories. In addition, we also have documented poor security performance within the nuclear security enterprise. As the July 2012 security incident at Y-12 highlights, NNSA has not fully implemented and sustained security improvements.[1] A recent NNSA review of NNSA federal oversight reiterates the need to pay special attention to the security of nuclear facilities.[2]

1b. Do you believe the National Research Council (NRC) presented sufficient evidence to support its recommendation?

In our view, the evidence we have reported on and recent events contradict NRC's recommendation to relax safety and security oversight. We have not examined in detail other NRC findings.

1c. Do you believe available evidence supports removing independent oversight from either NNSA or its contractors?

No. Because of the hazards involved, GAO has strongly supported independent oversight of DOE and NNSA safety and security programs. To be fully effective, as we reported in October 2008, an independent regulatory authority must have: independence, technical expertise, ability to perform reviews and have findings effectively addressed, enforcement, and public access to facility information.[3] In our report, we found that the DOE office responsible for independent

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[1] GAO, *Modernizing the Nuclear Security Enterprise: Observations on the National Nuclear Security Administration's Oversight of Safety, Security, and Project Management,* GAO-12-912T, (Washington, D.C.: Sep. 12, 2012).

[2] NNSA, "Assessment of NNSA Federal Organization and Oversight of Security Operations," (Washington, D.C. 2012).

[3] GAO, *Nuclear and Worker Safety: Actions Needed to Determine the Effectiveness of*

assessments of nuclear safety—the Office of Health, Safety, and Security (HSS)—fell short of fully meeting these criteria. DOE has taken some actions in response to the recommendations made in this report, but we reported in April 2012 that recent revisions to safety requirements may undermine efforts to establish an effective safety culture at DOE's nuclear facilities and weaken independent oversight of nuclear safety.[4]

2. GAO recently completed a report for the Committee on DOE safety reforms. In your review you questioned the National Labs about safety burdens .

2a. What specific examples did the labs or sites provide of safety requirements that were burdensome?

As we reported in our April 2012 report, the labs cited a May 2011 DOE Contractor study of DOE policies they considered to be the most burdensome. Four of the 18 most burdensome policies identified by laboratory managers addressed safety-related issues: (1) excessive oversight; (2) duplication between directives and industry standards; (3) directives with no-value requirements; and (4) excessive safety reporting. However, we note in this report that the study's authors could not provide specific examples of safety requirements that were burdensome. Furthermore, an April 2011 NNSA study looking at safety requirements found that safety requirements did not put an undue burden on contractors, and, specifically, noted that senior contractor managers considered that DOE nuclear safety requirements provided a sound framework to safely operate nuclear facilities.[5]

2b. What specific examples did the Labs or sites provide to show how burdensome requirements affect productivity or costs?

In our April 2012 report, we noted that DOE believed that revising its safety requirements would increase productivity and could help reduce costs. For example, senior DOE officials told us that productivity increases would result from raising the threshold at which a nuclear facility,

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Safety Improvement Efforts at NNSA's Weapons Laboratories, GAO-08-73 (Washington, D.C., Oct. 31, 2007).
[4] GAO, *Nuclear Safety: DOE Needs to Determine the Costs and Benefits of Its Safety Reform Effort*, GAO-12-347 (Washington, D.C.: Apr. 20, 2012).
[5] GAO-12-347.

such as a facility treating radioactive waste, would be required to undergo a rigorous review process by federal officials before starting up to ensure it will operate safely. DOE officials told us that revising this requirement to apply to higher-risk activities—such as starting up a new nuclear facility—rather than on lower-risk activities—such as re-starting a nuclear facility after routine maintenance—could help free up federal resources to perform review and oversight of other high-risk activities. We noted, however, that, in revising its requirements, DOE did not first analyze the costs of the original requirements or attempt to quantify how revising or eliminating requirements would reduce costs.[6]

3. Clearly, there have been delays and tremendous cost overruns at facilities being designed and built under NNSA management. Some of these delays may impact the ability of the agency to cost-effectively ensure the stewardship of the weapons stockpile and the clean-up of the sites.

3a. What is GAO's diagnosis of these delays [and tremendous cost overruns at facilities being designed and built under NNSA management]?

As we testified in September 2012, a basic tenet of effective management is the ability to complete projects on time and within budget. For more than a decade and in numerous reports, we have found that NNSA has continued to experience significant cost and schedule overruns on its major projects, principally because of ineffective oversight and poor contractor management. As a result, NNSA remains on our high-risk list as vulnerable to fraud, waste, abuse, and mismanagement.[7]

3b. Where should reforms focus to effectively address the root problems?

As noted in our September 2012 testimony, to address issues of ineffective oversight and poor contractor management, DOE has recently taken a number of actions to improve management of major projects, including those overseen by NNSA. For example, DOE has updated program and project management policies and guidance in an effort to improve the reliability of project cost estimates, better assess project risks, and better ensure project reviews that are timely and useful and identify problems early. These are positive steps, and we will continue to monitor and

[6] GAO-12-347.
[7] GAO-12-912T.

evaluate DOE's and NNSA's implementation of these actions. However, DOE needs to ensure that NNSA has the capacity—that is, the people and other resources—to resolve its project management difficulties so that its major projects do not continue to experience major cost overruns and schedule delays.[8]

4. Would you please provide examples where delays or overruns in the major NNSA NNSA design/construction projects were the result of DOE's independent oversight program?

4a. Were any of those delays or overruns the result of an invalid oversight [DOE independent oversight] finding?

We have not examined this issue in detail. However, DOE and NNSA have accepted almost all the Safety Board's recommendations to improve safety, to include the design of new facilities. This suggests that Board's recommendations have been valid.

5. A number of outside review bodies and even weapons labs themselves appear to advocate for full autonomy of NNSA. Your testimony indicates GAO does not believe "dramatic changes" in the governance model are necessary. Would you please elaborate why?

As we said in our June 2012 testimony, we do not believe that dramatic changes are warranted because we are uncertain whether such significant organizational changes to increase NNSA's independence would produce the desired effect. In our view, few, if any, of NNSA's problems in the areas of safety, security, and project management stem from the organizational relationship between NNSA and DOE. A dramatic organizational change, such as making NNSA an independent agency, may be disruptive. Currently, DOE provides NNSA with a large number of services, such as personnel and headquarters building security, office space, payroll, and information technology. NNSA would have to devote substantially more effort to create and then maintain these overhead functions.[9]

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[8] GAO-12-912T.

[9] GAO, *Modernizing the Nuclear Security Enterprise: Observations on the Organization and Management of the National Nuclear Security Administration*, GAO-12-867T, (Washington, D.C.: June 27, 2012).

6. In light of your past work examining DOE's independent oversight model, what challenges confront this model?

6a. To the extent GAO found the DOE independent oversight model were not working, what are the reasons for this, and what were GAO's recommendations for agency or Congressional action?

Detailed answers to this question are found in questions 1a. and 1c. DOE needs to have an organization that meets the criteria for effective independent oversight. As we discussed in our October 2008 report, these criteria include independence, technical expertise, ability to perform reviews and have findings effectively addressed, enforcement, and public access to facility information.[10] In addition, NNSA needs the capacity—that is, the people and other resources—to resolve its project management and safety and security difficulties.

6b. We understand that, at least until the recent Y-12 incident, DOE's independent oversight staff must coordinate its assessment activities with NNSA site office management. How does this coordination impact the quality of independent assessments and oversight?

Our April 2012 report found that this arrangement potentially raises concerns about whether the Office of Independent Oversight staff will be sufficiently independent from site office management. In addition, the reform effort gives the NNSA site office, rather than Office of Independent Oversight staff, increased responsibility for managing actions to correct problems identified in independent assessments. Site office determinations of issues that require more formal contractor responses may be influenced by the fact that the site offices also have responsibility for keeping costs under control and work on schedule.[11] A recently completed NNSA review has recommended that independent oversight be strengthened.[12]

7. In the past GAO has examined different protective force models for the nuclear weapons complex. Would you please summarize GAO's most recent review of protective force set up or reform proposals?

[10] GAO-08-73.
[11] GAO-12-347.
[12] NNSA 2012.

QFR RESPONSES NNSA HEARING

In January 2010, we found that over 2,000 contractor protective forces provide armed security for DOE and the National Nuclear Security Administration (NNSA) at six sites that have long-term missions to store and process weapons-grade special nuclear material.[13] DOE protective forces at each of these sites are covered under separate contracts and collective bargaining agreements between contractors and protective force unions. As a result, the management, organization, staffing, training and compensation—in terms of pay and benefits—of protective forces vary.

Protective force contractors, unions, and DOE security officials are concerned that the implementation of more rigorous requirements and the current protective forces' personnel systems threaten the ability of protective forces—especially older members—to continue their careers until retirement age. These concerns, heightened by broader DOE efforts to manage postretirement and pension liabilities for its contractors that could have a negative impact on retirement eligibility and benefits for protective forces, contributed to a 44-day protective force strike at an important NNSA site in 2007. According to protective force union officials, the issues surrounding the implementation of more rigorous requirements and retirement benefits could lead to strikes at three sites with large numbers of protective forces when their collective bargaining agreements expire in 2012. However, all three sites completed new bargaining agreements this year.

Efforts to more uniformly manage protective forces have focused on either reforming the current contracting approach or creating a federal protective force (federalization). Either approach might provide for managing protective forces more uniformly and could result in effective security if well-managed. However, if protective forces were to be federalized under existing law, most protective forces members probably would not be eligible for enhanced retirement benefits and might face a loss of pay or even their jobs.

Although DOE rejected federalization as an option in 2009, it recognized that the current contracting approach could be improved by greater standardization and by addressing personnel system issues. As a result, NNSA began a standardization initiative to centralize

[13] GAO, Nuclear Security: DOE Needs to Address Protective Forces' Personnel System Issues, GAO-10-275 (Washington, D.C.: January 29, 2010.

procurement of equipment, uniforms, and weapons to achieve cost savings. Under a separate initiative, a DOE study group developed a number of recommendations to enhance protective forces' career longevity and retirement options. DOE recently proposed to ease protective force physical fitness and medical requirements that may, if fully implemented, allay some of these concerns.

The Honorable Lee Terry and The Honorable Michael C. Burgess

1. Other than expediency, why would NNSA choose to place the PF under the M&O contractor? What "best practice" do you recommend from observing various models across the NNSA complexes?

In January 2010 report, we identified three different types of protective force contracts in use at DOE and NNSA sites: 1) direct protective force contracts with DOE, 2) within M&O contracts, and 3) subcontracts to the M&O contractor.[14] We have not evaluated the relationship between the contracting model and protective force performance. In our view, having the protective force within the M&O contract may streamline the coordination between site security and site operations. At the same time, it may reduce federal oversight of protective force operations.

2. Are physical security, paramilitary expertise, tactical training, response, etc. core competencies of any of the entities bidding for the M&O work?

We have not examined this issue.

[14] GAO-10-275.

Department of Energy
Washington, DC 20585

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Mr. Chairman:

In accordance with your request, dated October 17, 2012, please find the enclosed responses to the questions submitted for the record by Members of the Subcommittee regarding the hearing entitled, "*DOE's Nuclear Weapons Complex: Challenges to Safety, Security, and Taxpayer Stewardship,*" held on September 12, 2012.

If you have any further questions, please contact me at 202-586-4393.

Sincerely,

Gregory H. Friedman
Inspector General

Enclosure

U.S. Department of Energy

Office of Inspector General

Responses to Questions for the Record
following the Hearing entitled,
"DOE's Nuclear Weapons Complex: Challenges to Safety,
Security, and Taxpayer Stewardship"
held September 12, 2012

Questions submitted by the Honorable Lee Terry and the Honorable Michael C. Burgess

1. **Other than expediency, why would NNSA choose to place the PF under the M&O contractor?**

During our review, which resulted in the Special Report on *Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex* (DOE/IG-0868, August 2012), we were only told that the PF contract was moved under the M&O contractor in response to the security incident. We did not further pursue the NNSA Production Office's reasoning for this change because the focus of our review was on the circumstances surrounding the security incident itself. However, in our opinion, the decision to place the PF under the M&O contract could help alleviate the contract management issues we identified during our review. In particular, moving the PF could improve integration of the safeguards and security function, and simplify the lines of accountability and responsibility.

What "best practice" do you recommend from observing various models across the NNSA complex?

We are not in a position to recommend a "best practice" since we did not perform any analyses of NNSA PF models complex-wide.

2. **Are physical security, paramilitary expertise, tactical training, response, etc. core competencies of any of the entities bidding for the M&O work?**

While these certainly appear to be, at least, among the important competencies, we do not have the precise information to address the question. Respectfully, the responsible procurement officials are in a position to know the answer.

The House Committee on Energy and Commerce

September 12, 2012

Subcommittee on Oversight and Investigations

Document Binder

Tab	Description	Date
1	Dep. Secretary Poneman Memo: Department of Energy 2010 Safety and Security Reform Plan	03/16/2010
2	The tri-weapons lab white paper	04/17/2012
3	Secretary Chu Memo: Security at DOE Facilities with Category I Special Nuclear Material	08/07/2012
4	Glenn S. Podonsky Memo: Security at DOE Facilities with Category I Special Nuclear Material	08/08/2012
5	DOE IG Special Report: Inquiry into the Security Breach at the national Nuclear Security Administration's Y-12 National Security Complex	August 2012

The Deputy Secretary of Energy
Washington, DC 20585

March 16, 2010

MEMORANDUM FOR KRISTINA M. JOHNSON, UNDER SECRETARY OF ENERGY
STEVEN E. KOONIN, UNDER SECRETARY FOR SCIENCE
THOMAS P. D'AGOSTINO, UNDER SECRETARY FOR NUCLEAR SECURITY
GLENN S. PODONSKY, CHIEF HEALTH, SAFETY AND SECURITY OFFICER
INGRID A. C. KOLB, DIRECTOR, OFFICE OF MANAGEMENT
SCOTT BLAKE HARRIS, GENERAL COUNSEL

FROM: DANIEL B. PONEMAN

SUBJECT: Department of Energy 2010 Safety and Security Reform Plan

The Department has recently developed the attached end-state vision for safety and security reform, which will guide our efforts to enhance productivity and achieve the Department's mission goals while maintaining the highest standards of safe and secure operations at Department of Energy facilities. It is imperative that we initiate the necessary actions quickly to attain this end state in 2010.

In 2009, the Office of Health, Safety and Security (HSS) began reforming its approach to enforcement and oversight by recognizing line management's responsibility for safety and security, reviewing opportunities for streamlining requirements, and eliminating directives that do not add value to safety and security. I have tasked HSS to continue this reform path, but they will need your input, cooperation and support. Therefore, please assure that senior managers and key staff from your Headquarters and field organizations are working closely with HSS to achieve our common goals.

The attached Plan outlines actions and milestones that require your attention. I recognize that this is a major effort and will involve the timely commitment of valuable resources, but your support, as well as input from the Defense Nuclear Facilities Safety Board and our stakeholders, is vital to our success.

Success will be measured through near-term relief from specific low-value burdensome requirements as well as longer-term streamlining of requirements that will lead to measurable productivity improvements. Please keep me informed of our progress and to alert me in a timely manner of any impasse that needs my attention.

Attachments

cc: Ines Triay, EM-1
William Brinkman, SC-1
Pete Miller, NE-1
James Markowsky, FE-1
Cathy Zoi, EE-1
David Geiser, LM-1
Mike Weis, PNSO, FMC Chair
Jeff Smith, ORNL, Deputy Director
Al Romig, SNL, Deputy Director
Adam Cohen, PPPL, NLDC Executive Secretary

Attachment 1

End-State Vision for Safety Reform

To enhance productivity and achievement of mission goals, while maintaining the highest standards of safe operations at DOE facilities through the development, implementation, and assurance of effective, streamlined, and efficient safety policies and programs.

Safety Performance: Contractors are provided the flexibility to tailor and implement safety programs in light of their situation without excessive Federal oversight or overly prescriptive Departmental requirements.

Safety Responsibilities: To facilitate effective mission accomplishment, decision-making authorities are pushed to the lowest appropriate level of contractor and Federal management, considering hazards, risks, and performance history. Authority and accountability for safety rests with line management, including responsibility for and oversight.

Safety Requirements: DOE worker safety requirements are based upon existing national standards, with internally-derived requirements developed to address unique DOE conditions. DOE's regulatory requirements for occupational safety and health are founded on regulations promulgated by the Occupational Safety and Health Administration (OSHA), invoke current national standards to address outdated aspects of OSHA regulations, and establish or invoke requirements to address unique DOE workplace hazards. The Department's corporate approach for maintaining the highest standards of safe operations is promoted through its Integrated Safety Management Policy, DOE P 450.4, *Safety Management System Policy*, and implemented by contractors through Department of Energy Acquisition Regulation Clause 970.5223-1, *Integration of Environment, Safety and Health into Work Planning and Execution.*

Safety Assurance: The Department's contractors maintain an assurance system that provides reliable measurement of the effectiveness of their safety management systems and facilitates timely corrective actions to system or performance weaknesses.

Regulatory Oversight and Enforcement: HSS's approach to safety regulatory oversight and enforcement supports line management's efforts to affect the conduct and priorities of their contractors. Oversight is focused on safety performance. Oversight inspections and enforcement actions are prioritized for contractors with poor safety records and serious or recurring violations, and are consistent with approaches and penalties employed by OSHA and the Nuclear Regulatory Commission.

Attachment 2

End-State Vision for Security Reform

To enhance productivity and achievement of mission goals, while protecting sensitive information, technologies, and materials through the development, implementation, and assurance of effective, streamlined, and efficient security policies and programs.

Security Performance: Contractors are provided the flexibility to tailor and implement security programs in light of their situation and to develop corresponding risk- and performance-based protection strategies without excessive Federal oversight or overly-prescriptive Departmental requirements.

Security Responsibilities: To facilitate effective mission accomplishment, decision-making authorities are pushed to the lowest appropriate level of contractor and Federal management, considering vulnerabilities, risks, and performance history. Authority and accountability for security rests with line management, including responsibility for oversight.

Security Requirements: DOE security strategies are based upon legally mandated requirements, national standards developed by peer agencies, a rational threat assessment, and internally derived requirements developed to address unique DOE security risks. DOE-unique security requirements are streamlined, non-redundant, focused on desired performance outcomes, and tailored to specific mission and site risks. DOE security requirements are standardized where necessary to support interoperability and cost savings.

Security Assurance: The Department's contractors maintain an assurance system that provides reliable measurement of the effectiveness of their security programs and facilitates timely corrective actions to system or performance weaknesses.

Regulatory Oversight and Enforcement: HSS's approach to independent oversight and regulatory enforcement supports line management's efforts to affect the conduct and priorities of their contractors. Oversight is focused on security performance. Oversight inspections and enforcement actions are prioritized for contractors with serious or recurring violations of security requirements, with penalties commensurate with potential harm to national security and with those imposed by peer agencies.

Attachment 3

DOE 2010 SAFETY AND SECURITY REFORM PLAN

Background

In 2009, the Office of Health, Safety and Security (HSS) began working to reform its enforcement and oversight approach, recognizing line management's significant responsibility for safety and security. To date, this approach has resulted in (1) increased coordination of enforcement actions with line management, (2) working with the Field Management Council (FMC) to understand where reform in its oversight and enforcement practices is needed, (3) suspending independent oversight of low-hazard operations and lower-value security assets, except for those cases where site performance requires increased attention, and (4) maintaining rigorous and informed oversight of high-hazard operations or high-value security assets.

In November 2009, following the safety and security reform studies directed by the Deputy Secretary, HSS began a disciplined review of all HSS directives, including a systematic review of the Department of Energy safety and security regulatory model (which includes both DOE directives and regulations). As a result, HSS identified 24 directives for potential cancellation (subject to consultation with the Program Offices, including the Central Technical Authorities). HSS has also developed approaches for safety and security disciplines that are expected to result in more than a 50 percent reduction in the number of existing safety and security directives for which HSS is the Office of Primary Interest.

Priority Actions and Milestones

The Department is setting the following safety and security reform goals and target milestones. The Department leadership team expects senior managers of Headquarters and field organizations actively to support these challenging efforts. Specifically, leadership of each Headquarters and field organization will need to ensure the timely and efficient engagement of appropriate managers and staff at all levels of the organization as needed to support HSS in achieving the actions listed below.

Action	Milestones
Process: Initiate directives process changes to support the pace of this reform effort and require a rapid (3-day) escalation for impasse (veto) resolution.	March 2010
Outreach: Develop an outreach plan that will engage, inform and enlist the support of DOE internal and external stakeholders, (including the Defense Nuclear Facilities Safety Board) throughout this reform effort to achieve our end-state vision. Outreach includes a roundtable discussion with the Deputy Secretary, Under Secretaries, and various worker unions in March.	March 2010
Security Near-term: Provide relief from specific burdensome security	March 2010

Lawrence Livermore National Laboratory | Los Alamos NATIONAL LABORATORY | Sandia National Laboratories

The Model for the National Nuclear Security Administration and its Laboratories: Recommendations for Moving Forward

The Mission

The National Nuclear Security Administration (NNSA) laboratories have a core mission of nuclear weapons. This unique, demanding, and solemn mission is central to US national security and comes with an obligation that the laboratories have science and engineering capabilities that are second-to-none. Because of the distinctive capabilities developed and sustained at the laboratories for nuclear weapons, other elements of NNSA, DOE, and other federal agencies depend on the labs to perform work for a wide spectrum of critical national security missions. This work outside the nuclear weapons program (referred to as interagency work in the remainder of this document) has been accomplished by the labs since the 1960s and has expanded in scope as national security threats increased in complexity and urgency. Today the integrated skills and knowledge this interagency work generates and the technical challenge it creates for the laboratories' staff has become an essential element in sustaining the core nuclear weapons mission, and the present and future technical vitality of the labs. It is no longer imaginable that the laboratories could deliver consistently on the commitments to the nuclear weapons program without the synergistic interagency work that attracts top talent, hones our skills, and provides stability through the nuclear weapons program cycles. Government commitment for the broad national security work of the laboratories is essential for the US to ensure the preeminence of our nuclear weapons and to enable multidisciplinary technical solutions to other complex and high-risk national security challenges.

Today the interagency work conducted at the NNSA produces critical national security solutions *and* strengthens the core nuclear weapons program. However, the interagency work is not codified in statutory language of the labs' missions, and the processes to manage the broader national security missions into the future are not optimized. To advance this broad national security model it is critical that discussions on strategic support of enabling research, development, test and evaluation occur between the laboratories, NNSA, and other federal agencies. A new comprehensive set of reduced requirements is also needed, tailored specifically to address how federal agencies access the capabilities of NNSA's laboratories for national security related work.

Recommendation #1: Include statutory language codifying the broad national security mission of the NNSA laboratories in legislation. In addition, establish a streamlined statutory and regulatory framework for the NNSA laboratories to accept and perform national security work for other US federal agencies. NNSA oversight of other agency work should focus on the portfolio of work rather than individual projects.

The Federally Funded Research and Development Center Construct

The construct of Federally Funded Research and Development Centers (FFRDC) has been robust for 70 years. Today, the core tenets of FFRDCs (from FAR Title 48CRF35.017) remain relevant to the NNSA Labs:

- An FFRDC meets a special long-term research or development need
- An FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence
- The long-term relationships between the Government and FFRDCs should provide the continuity that helps attract high-quality personnel to the FFRDC. This relationship should also be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, retain objectivity and independence, preserve familiarity with the needs of its sponsor(s), and provide a quick response capability.

While it remains clear the FFRDC construct is appropriate for the national security challenges the NNSA laboratories support, practical application of some of the intent of the construct has atrophied. Returning to the founding principles of FFRDCs across the national security enterprise will help create a more efficient and impactful future for the ultimate benefit of the US public. Specifically, the Government should use the laboratories as mission partners, free from conflict of interest, to help define strategic direction and provide innovative approaches. A strategic dialog between executive leaders of the NNSA FFRDCs and Government sponsors needs to be restored. Part of the dialog should include the laboratories' Directors' assessment of the health of the laboratories.

Recommendation #2: Support a return to a strong partnership between the Government and the NNSA FFRDCs exemplified by active engagement of the National laboratories' leaders in collaborative strategic discussion with the Government sponsors regarding currency of expertise, health of the laboratories, and mission priorities. Restore the role of the laboratories to contribute meaningfully to annual and long-term budget and program planning.

Government-Owned, Contractor-Operated Model

The Government-Owned, Contractor-Operated (GOCO) model remains well suited for the unique, core mission of the NNSA laboratories for nuclear weapons and the highly specialized facilities and associated liabilities needed to conduct that mission. The GOCO model allows the Government to make the substantial investments needed for the unique mission, and the private sector to provide best practices. In addition, the reachback of FFRDCs to their respective parent companies and/or universities provide important ties to the larger science and engineering communities.

However, the Management and Operating (M&O) contracts have become very complex and overly prescriptive. The amount and level of detail in the contracts, supporting measurement vehicles (Performance Evaluation Plans - PEPs), and resultant oversight exercised by NNSA and DOE headquarters and site offices, as well as third party groups, are redundant and costly. The burden the NNSA oversight model imposes appears to be significantly higher than the models used by FFRDCs operated by other federal agencies such as the DoD and NASA. Many independent studies have come to this conclusion and recommended modifications, yet changes in the NNSA oversight model and M&O contracts have not occurred, and in fact the oversight has continually increased.

The lack of progress in achieving cost-effective oversight is hampered by (1) the complexity associated with accurately assessing the costs of oversight versus risks, and (2) the general lack of trust between the DOE/NNSA and the labs. Within the DOE/NNSA, there are overhead costs

well beyond the number of people who have direct oversight responsibilities, many resulting from lack of clarity and duplication of roles, responsibilities, authorities, and accountabilities among DOE, NNSA, NNSA site offices, and the FFRDCs.

It is critical to improve the current oversight practices now, and to begin to envision oversight practices for the future that include risk and performance evaluation sharing with other Government agencies.

Recommendation #3: Implement improved contracting and oversight models based on best practices from other FFRDCs and FFRDC-like institutions (e.g. DOE Office of Science, DoD, NASA) that would drive a cultural change in the way NNSA manages the labs – moving toward an efficient approach consistent with the original FFRDC intent. Provide greater flexibility to the laboratories to execute mission, sustain capability, and manage risk within an approved operating envelope, with roles, responsibilities, authorities, and accountability defined at a higher-level and with greater autonomy. Implement a risk management framework model to balance responsibilities between laboratories and NNSA to improve trust and increase effectiveness.

Recommendation #4: Limit the funding the NNSA uses for oversight to a percentage of the total agency budget consistent with best practices from other FFRDCs or the private sector. Reinvest resulting cost savings in the laboratories' infrastructure to ensure the unique facilities required for the broad national security missions are supported. Eliminate duplicative assessments and oversight, with a preference for internal and third party assessments integrated into the contractor performance management system.

Managing the Health of Science and Engineering

The decreased flexibility within mission-driven programs and increased oversight on Laboratory-Directed R&D (LDRD) funds has led to a strain on the ability to sustain long-term excellence of science and engineering. Increasingly, mission work has become more milestone-driven, with short-term drivers that do not allow for supporting long-term capability needed to respond to future, and unanticipated, national security needs. No other institutions maintain this reservoir of talent for the nation, available as needed when urgent national needs arise. The recently completed National Academy of Sciences (NAS) study has a section devoted to recommendations to restore the flexibility of Lab Directors to manage capability with a multi-year horizon.

Recommendation #5: Incentivize a longer-term perspective in managing the health of the laboratories by increasing flexibility for laboratories to invest in core science and engineering capabilities. Rebalance fee incentives to value mission execution and strategic management of capability relative to compliance and operational oversight. Emphasize the importance of LDRD as an investment that benefits all current and future programs. Provide for approval of LDRD as a portfolio rather than project-by-project, designate a single approval office, and focus oversight on high-risk projects. Restore programmatic investments in supporting science needed for long-term mission delivery and unanticipated national security challenges.

NNSA Laboratories' Governance

Many reports by independent committees have found the micromanagement of the NNSA labs is debilitating and costly, and other reports have called for increased oversight. While these finding appear to be in opposition, one conclusion is clear -the governance of the NNSA labs is broken and must be changed.

From the laboratories' perspective, the NNSA involvement with the details of how the mission is accomplished is excessive and expensive, is not risk-based, and does not represent best practices. The governance is in urgent need of transformation.

The 2002 "Report to Congress on the Organization and Operations of the NNSA" contains a strong set of organizational principles that, if followed, would move the institution to a more streamlined operational model. Since the current structure has now been in place for about twelve years and the original organizational principles not adhered to, the only practical way of achieving the kind of change needed is to institute a structural change, even though structure alone will not ensure better governance.

Options for structural changes have been reviewed by many and are nicely summarized in "America's Strategic Posture – The Final Report of the Congressional Commission on the Strategic Posture of the United States" published in 2009. The options for a new structure range from strengthen NNSA autonomy within DOE to move all or some of the NNSA enterprise to DoD to more complete independence of NNSA with more attention from the President. In that report the Commission recommends creating NNSA as an independent agency reporting to the President through the Secretary of Energy. The Commission also states the preferred state is NNSA as an independent agency reporting to the President with a "Board of Directors" composed of the Secretaries of Energy, Defense, State, Homeland Security, and the Director of National Intelligence.

We believe the time to act on a change in governance is now, although the desired end-state may take time to achieve. If governance changes are reinforced by structural changes, the changes are more likely to be effective over the long-range. Any changes should decrease costs and also result in increased effectiveness of Government and laboratories' management systems.

Recommendation #6: Congress and the Administration should take immediate action to improve governance of the NNSA laboratories.

Dr. Penrose C. Albright
Director, Lawrence Livermore National Lab

Dr. Charles F. McMillan
Director, Los Alamos National Laboratory

Dr. Paul J. Hommert
Director, Sandia National Laboratories

The Secretary of Energy
Washington, D.C. 20585

August 7, 2012

MEMORANDUM FOR GLENN S. PODONSKY
CHIEF HEALTH, SAFETY AND SECURITY OFFICER

cc: THOMAS P. D'AGOSTINO
UNDER SECRETARY FOR NUCLEAR SECURITY

WILLIAM F. BRINKMAN
DIRECTOR, OFFICE OF SCIENCE

DAVID B. SANDALOW
ACTING UNDER SECRETARY OF ENERGY

FROM: STEVEN CHU

SUBJECT: Security at DOE Facilities with Category I Special Nuclear Material

As we have discussed throughout the previous week, I am extremely concerned about the security breach which recently occurred at the Y-12 National Security Complex. The Department's response must continue to be the top priority for the DOE leadership. Earlier this week, I directed the site managers to submit to me their written assurance that all Category I Special Nuclear Facilities within their authority are in full compliance with all approved policies, directives, and internal policies established by your organization and site-specific requirements.

As part of our ongoing response, I am hereby directing your Office of Health, Safety and Security (HSS) to evaluate the adequacy of protection of Category I quantities of special nuclear material (SNM) across the Department of Energy (DOE) complex, including National Nuclear Security Administration (NNSA) sites.

As a first critical step, your office is supporting NNSA in their initial response and recovery actions at Y-12. The NNSA Special Security Review at Y-12 is to be completed by August 17. Following the completion of that review, HSS is directed to conduct an independent security inspection of Y-12 security operations, to include rigorous force-on-force and other performance testing activities. The onsite Y-12 inspection activities should be completed by September 21, 2012, with a final report of inspection results completed and briefed to DOE senior management by September 28, 2012.

In addition, HSS will lead the effort in assessing the current security policies and security program implementation at all DOE Category I SNM sites, with support from line management (NNSA, Environmental Management, Nuclear Energy and the Office of Science) at the sites.

I am also directing your HSS Independent Oversight office to identify and assess potentially systemic issues affecting Department of Energy (DOE) safeguards and security programs at Category I SNM sites, and to help identify approaches for addressing them. HSS is to conduct a series of inspections at all DOE/NNSA sites with Category I quantities of SNM. HSS is to develop a schedule for these reviews that provides senior DOE management with a timely and accurate perspective on the extent of condition of security vulnerabilities and a proposal for addressing any identified issues. This effort will involve considering a broad spectrum of threats and adversary capabilities and developing additional performance testing methodologies, including no-notice and limited notice testing to obtain a more realistic assessment of site response capabilities. A comprehensive plan and protocol for implementing these enhancements will be finalized by October 12, 2012.

I am concurrently directing all DOE and NNSA managers to support your efforts and to cooperate in the shared goal of ensuring that the Nation's security interests are effectively protected.

Department of Energy
Washington, DC 20585

August 8, 2012

MEMORANDUM FOR WILLIAM A. ECKROADE
PRINCIPAL DEPUTY CHIEF FOR MISSION SUPPORT OPERATIONS

LARRY D.WILCHER
DIRECTOR, OFFICE OF SECURITY

FROM: GLENN S. PODONSKY
CHIEF HEALTH, SAFETY AND SECURITY OFFICER

SUBJECT: Security at DOE Facilities with Category I Special Nuclear Material

This Memorandum is to appoint you to jointly lead the Office of Health, Safety and Security (HSS) response to the security breach at the Y-12 National Security Complex, and our efforts to identify actions necessary to ensure the adequate protection of the Department of Energy (DOE)'s Category I quantities of special nuclear material (SNM).

Consistent with direction that I have received from the Secretary in his Memorandum dated August 7, 2012, the actions I am directing you to begin immediately include: conducting a comprehensive inspection of Y-12 security operations by the HSS Independent Oversight organization, to include rigorous force-on-force and other performance testing activities; developing and implementing the near-term steps to assess critical protection program elements at DOE Category I SNM sites nationwide; and initiating a series of ongoing Independent Oversight enhancements to assess potentially systemic issues affecting DOE safeguards and security programs. Additional details are provided below.

The HSS response to the incident at Y-12 should be your highest priority for the foreseeable future, and I am asking that you deploy all necessary HSS resources toward the successful execution of the directions set out below.

Independent Oversight Inspection of Y-12 Security Operations (led by Mr. Eckroade)
As directed by the Secretary, HSS, under your leadership, will conduct a comprehensive security inspection of Y-12 security operations. The inspection will be conducted in accordance with Independent Oversight directives and protocols, and will include rigorous force-on-force and other performance testing activities. It will focus on security program elements relating to protection of SNM, to include protection program management, vulnerability assessment,

protective forces, physical security systems, material control and accountability and human reliability program. A detailed inspection plan will be provided to the National Nuclear Security Administration (NNSA) and Y-12 management not later than August 17, 2012. Onsite inspection activities will begin the week of August 27, 2012; onsite inspection activities (to include force-on-force performance testing and site report validation activities) will be completed by September 21; and as requested by the Secretary a final report of inspection results will be presented and briefed to DOE senior management by September 28, 2012.

Near-Term Assessment of Category I Sites (led by Mr. Wilcher)
HSS, under your leadership and in collaboration with the NNSA, the Office of Environmental Management (EM), the Office of Science (SC) and the Office of Nuclear Energy (NE), will assess the current security policies and security program implementation at all DOE and NNSA Category I SNM sites. The security assessment team will perform assessments at the following sites: Pantex Plant; Idaho National Laboratory; Los Alamos National Laboratory; Lawrence Livermore National Laboratory; Savannah River Site; Oak Ridge National Laboratory; Nevada National Security Site; Hanford Site, and the Office of Secure Transportation.

The HSS led team under your leadership will consist of subject matter experts from HSS, NNSA, EM, SC and NE in the areas of:

- Protective Force Operations;
- Training and Testing Security Systems Design;
- Operations and Performance Testing;
- Performance Assurance Risk Assessment, and
- Vulnerability Assessment processes.

The assessment will focus on:

- The operational assessments, surveillance and performance testing of protective forces and security systems;
- Reviewing maintenance and compensatory measures for security systems;
- Compliance with relevant policies by protective force and security systems;
- Protective force knowledge and training on Departmental deadly force policies and arrest authorities and familiarity and training on site and Departmental Rules of Engagement;
- Ability of the Protective Force to execute missions per established response plans and post orders; and
- A crosswalk of security system and protective force operations and plans as depicted in the vulnerability assessment and site security plans.

A schedule for these reviews should be developed which provides senior DOE management with a timely and accurate perspective on the extent of condition of any related security

vulnerabilities at each site. All site assessments should be completed by no later than December 31, 2012.

Enhancing Independent Oversight Performance Testing Operations (led by Mr. Eckroade)

As further directed by the Secretary, the HSS Independent Oversight office, in coordination with NNSA and under your direction, will assess potentially systemic issues affecting Department of Energy (DOE) safeguards and security programs at high-hazard Category I SNM sites, and to help identify approaches for addressing them. The Y-12 incident, as well as other real-world catastrophes (e.g., the Fukushima nuclear disaster) have provided important insights regarding the need for effective Independent Oversight, including critical analysis and challenging and realistic performance testing. Additional details regarding the scope of these enhancements are contained in the attachment to this Memorandum. A comprehensive plan and protocol for ongoing implementation of these enhancements will be finalized, and briefings provided to DOE senior management by October 12, 2012.

Thank you in advance for your leadership in accomplishing these objectives which have been set out for us by the Secretary.

Attachment

Cc: Steven Chu, Secretary of Energy
Daniel B. Poneman, Deputy Secretary of Energy
Thomas P. D'Agostino, Under Secretary for Nuclear Security
David B. Sandalow, Acting Under Secretary for Energy
William F. Brinkman, Director, Office of Science
Brandon K. Hurlbut, Chief of Staff
Jeffrey M. Navin, Deputy Chief of Staff

Attachment: Enhancing Independent Oversight Performance Testing Operations (details)

Informed by the potentially significant consequences of these types of safety and security incidents at DOE Category I nuclear facilities, and consistent with the Department's Graded Security Protection Policy, Independent Oversight will expand the scope and variety of performance testing methods utilized to assess the readiness of DOE/NNSA site protection systems against a broader spectrum of threats and adversary capabilities. Performance testing methodologies will include no-notice and limited notice testing to obtain a more realistic assessment of site response capabilities.

The Department's approach for achieving enhanced safeguards and security programs will include incorporating the following methods and attributes into existing Independent Oversight performance testing practices:

- Conducting enhanced, no-notice Alarm Response and Assessment Performance Tests (ARAPTs) that incorporate stimuli, such as cut fences/locks or discarded equipment that could be used by an adversary, to which protective force personnel must respond. .
- Conducting no-notice security incident performance tests that evaluate protective force response to reported and unreported suspicious packages or improperly parked/suspect vehicles which are located in public access areas.
- Conducting no-notice, scenario-based limited scope performance tests (LSPTs) to evaluate the implementation of compensatory measures.
- Conducting no-notice LSPTs at vehicle and pedestrian access portals to evaluate protective force response to varying scenarios such as personnel utilizing false credentials for access and personnel or vehicles attempting to enter security areas with controlled/prohibited articles (i.e., cameras, weapons, explosives, etc.).
- Conducting limited notice LSPTs to evaluate protective force response to scenarios involving active shooters, protestor activists, malevolent insiders, etc.
- Conducting additional announced force-on-force performance tests that evaluate protective force readiness to less probable (but plausible) threat scenarios to confirm protection system failure points as defined by site vulnerability assessment data, and to inform line management decision making processes.

U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Special Report

Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex

DOE/IG-0868 August 2012

Department of Energy

Washington, DC 20585

August 29, 2012

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Special Report on "Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex"

BACKGROUND

The Y-12 National Security Complex is one of four production facilities in the National Nuclear Security Administration's Nuclear Security Enterprise. The site focuses on the processing and storage of uranium, an activity essential to the safety, security and effectiveness of the U.S. nuclear weapons stockpile. Y-12 maintains an extensive security mechanism that relies on a well-trained and extensively equipped protective force, advanced technology, and a variety of physical fortifications. During Fiscal Year 2012, Y-12 plans to devote about $150 million in taxpayer funds to ensure the security of its uranium inventory and physical plant. Y-12 has long enjoyed a reputation as one of the most secure facilities in the United States.

During the early morning hours of July 28, 2012, three individuals (hereinafter referred to as the trespassers), gained access to the area surrounding the Highly Enriched Uranium Materials Facility (HEUMF) at Y-12 and defaced the building without being interrupted by the security measures in place. In fact, the trespassers were not physically observed by the Y-12 Protective Force until after they had severed three separate fences surrounding the HEUMF. After receiving a call from the Oak Ridge Operations Center, Office of Inspector General (OIG) special agents arrived, arrested the trespassers and transported them to the Blount County Detention Facility. We initiated a joint criminal investigation of the trespass and, at the time of this report, were working closely with the Federal Bureau of Investigation and the U.S. Attorney for the Eastern District of Tennessee on this matter.

Because of the importance of ensuring the safe and secure storage of nuclear materials we commenced a special inquiry into the circumstances surrounding the Y-12 breach within days of the event.

PRELIMINARY RESULTS

During our review, we conducted interviews with Federal and contractor officials, security personnel, and alarm station operators. We also reviewed supporting information pertinent to the sequence of events on the night of the breach. Based on these inquiries, we found that the Y-12 security incident represented multiple system failures on several levels. For example, we identified troubling displays of ineptitude in responding to alarms, failures to maintain critical

security equipment, over reliance on compensatory measures, misunderstanding of security protocols, poor communications, and weaknesses in contract and resource management. Contractor governance and Federal oversight failed to identify and correct early indicators of these multiple system breakdowns. When combined, these issues directly contributed to an atmosphere in which the trespassers could gain access to the protected security area directly adjacent to one of the Nation's most critically important and highly secured weapons-related facilities.

Alarm Response

We found that the response to the security breach at Y-12 was inadequate in several material respects. Although immediately aware that a number of alarms had been activated at the HEUMF, a Protective Force officer was not promptly dispatched to assess the situation. When an officer finally arrived, the individual did not immediately secure the scene or neutralize the trespassers. This did not occur until a supervisor arrived and did so. In fact, the first responder remained in the patrol vehicle answering a cell phone call from a supervisor for a brief period. The officer, in a personal interview, told us that he did not notice the trespassers until they approached the vehicle and "surrendered" to the responder. Even when the officer exited the patrol vehicle, the officer did not move to secure the area, did not draw a weapon, and permitted the trespassers to roam about and retrieve various items from backpacks they had apparently brought into the area adjacent to the HEUMF. The responder also did not protect his weapon, thereby hazarding it to control by the trespassers. When the supervisor arrived on the scene, direction was given to the first responder to cover the supervisor until protective gear could be donned. However, the first responder did not provide cover and continued to look away from the trespassers at other areas of the site.

In addition, an officer stationed inside the HEUMF at a post directly adjacent to the trespassers' point of entry did not properly respond to the intrusion. In direct contrast to established policy, the officer used an unauthorized technology (a pan-tilt-zoom camera) to perform an assessment of the security zone that the trespassers penetrated. The officer did not detect the trespassers even though two members of the group had entered the security zone through a hole the group had cut in the outermost fence of the Perimeter Intrusion Detection and Assessment System surrounding the HEUMF and were in the process of cutting an adjacent fence. At the same time, another officer silenced a local alarm without looking out of a gun port or available viewing glass to assess the situation.

In short, the actions of these officers were inconsistent with the gravity of the situation and existing protocols.

After the arrival of a Protective Force supervisor, the Protected Area Sector Lieutenant ordered a lockdown of the entire Protected Area at Y-12. A number of protective measures were then deployed, including vehicle arrest systems, tactical response teams, and patrols by armored vehicles. Searches for other possible trespassers also commenced.

Maintenance of Security Equipment

Technology features critical to the security of HEUMF and other nuclear related facilities at Y-12 were inoperable and/or not properly maintained. Our inquiry disclosed that both Federal and contractor management officials at the site were aware that a substantial backlog of degraded and/or nonoperational security equipment existed. Gaps between the Department's requirements and NNSA policy for addressing critical security maintenance issues likely contributed to the backlog.

We found that security equipment repairs were not always treated as a priority at Y-12. Inoperative cameras, devices that contributed the delays in assessing alarms and identifying the trespassers in this case, were not considered to be critical security devices by Y-12. Rather, these devices were assigned a priority of "security significant," a rating that permitted repairs to be delayed. At least one other site with a weapons and nuclear material mission, NNSA's Pantex Plant in Texas, had classified cameras as "critical" elements of its security system. We discovered that the Department required that repairs of critical equipment be initiated within 24 hours. However, even if the cameras had been properly prioritized at Y-12, NNSA's policy in this area did not specify repair time requirements.

Although we did not verify the information because of the expedited nature of our review, NNSA Headquarters officials told us that similar NNSA sites appeared to follow the Department's policy in that they had repair rates for critical equipment of less than 24 hours. A senior contractor official at Y-12 told us that critical items were to be repaired within 5-10 days; however, we could not identify regulations/guidance or directives supporting that assertion. The same official later acknowledged that repair timeframes were treated as a goal rather than a requirement. As a consequence, important maintenance actions were significantly delayed and equipment was not returned to service in a timely manner. As it relates to this intrusion, one critical fixed camera that provided coverage of the penetration area had been out of service for approximately 6 months. We found this to be troubling.

Required, periodic testing of security features was also not properly performed. Notably, we learned that when equipment was tested officials only sought to determine that a "feed" was available from the device rather than determining whether all of the device's features were working. In this particular case, it is likely that had one of the device's features been operational, the trespassers would have been detected immediately after entering the security zone surrounding the HEUMF and prior to reaching the facility. When questioned, both security and maintenance told us that they had no idea of how long the feature had been out of service. At least one security officer told us that had this feature been operational, the trespassers would have been detected before they cut the innermost protective fence at the HEUMF.

Federal and contractor officials at Y-12 told us that the cameras had been reclassified as critical security elements within 24 hours of the event and that repairs of all critical equipment had commenced. During our tour of the HEUMF, we observed that the malfunctioning camera and security feature just discussed had been repaired and appeared to be functioning as intended. As a demonstration of the need for continuing vigilance in this area, we noted that a camera repaired after the breach malfunctioned within days of its repair.

Compensatory Measures

Over reliance on the use of compensatory measures to address equipment failures impacted system readiness at Y-12. When questioned as to why action was not taken to address growing maintenance backlogs, Federal officials told us that with the advent of NNSA's contractor governance system (Contractor Assurance System), they could no longer intervene. They contended that as long as the maintenance anomalies were identified and compensatory measures were in place, they could take no action to prompt the contractor to complete needed repairs. In these matters, a compensatory measure is generally defined as an off-setting control such as dispatching an officer to visually assess the situation/inspect an area where a security device had alarmed when the installed technology feature was inoperable. One of these same officials also indicated that they had been instructed not to evaluate and report on "how" the contractors were conducting business, but to focus instead on ensuring that the mission was accomplished. The other Federal official told us that risk management and cost considerations could lead to equipment not being repaired at all, and as a result, cause compensatory measures to become permanent. A senior NNSA Headquarters security official noted that the overuse of compensatory measures, coupled with issues with false alarms, may have led to complacency of the Protective Force and diminished security at Y-12. Our analysis suggested that compensatory measures should be targeted and that, in this particular instance, were not an adequate substitute for critical equipment that is out of service.

Interpretation of Existing Policy

Protective Force officers misinterpreted established policies regarding the use of technology to perform field assessments of alarm activations. NNSA's procedures in this area required that cameras used for such assessments be fixed in position, with fixed length lenses. Established guidance specifically noted that pan-tilt-zoom cameras, installed in a number of areas at Y-12, may only be used for such assessments if in a locked configuration. At least one reason for this distinction is that it may be possible for an adversary to follow the movement of a camera and out-maneuver it to avoid detection. Protective Force officials, however, told us that they believed that it was acceptable to use non-fixed cameras for assessments of security events. In this particular case, the pan-tilt-zoom camera that was used for the event actually revealed an image of the trespassers as they breached security barriers; one that was unfortunately not detected by the officer operating the camera.

Communication

We also observed that several troubling communications deficiencies surfaced during the security breach. As one example, security police officers on the night of the incident incorrectly assumed that trespassers who were beating on the external wall of the HEUMF with a hammer were plant maintenance workers. The officers noted that they were often not alerted to scheduled maintenance, and that workers would appear in the security area outside the facility without warning. According to the officers, the arrival of maintenance workers in the hours of darkness and without warning was not unusual. In comments on a draft of this report, NNSA raised questions about the accuracy of this statement. In response, we contacted the Plant Shift Superintendent's office for clarification. Officials within the Superintendent's office confirmed that workers such as roofers, utility repair persons and fire personnel performed work early in the

morning. However, they explained there was an established process for work approval which included involvement from Management and Operating (M&O) and Protective Force contractor personnel. Thus, there appeared to be a breakdown in communications on this point that we could not reconcile.

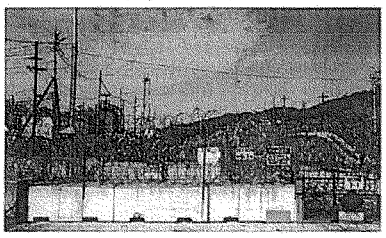
In addition, Protective Force officers were not advised of equipment outages when they assumed watch. Officers told us that they often did not learn of equipment outages until they tried to access the equipment to do a field assessment of a security event. The officers explained that knowing what equipment was non-operational at the time they assume their posts would be beneficial when they were called on to respond to alarm activations.

The Protective Force relied heavily on communication via cell phones rather than radios. Although generally prohibited by site security plans, both the first and second responders to the July 28 intrusion were dispatched via cell phone. Directives, to which site contractors were required to adhere, mandated that the digital, encrypted radio system for the Oak Ridge Reservation was to be used as the primary means of communication by the Protective Force. Confusion regarding these explicit requirements, however, may have existed because the NNSA policy did not specifically indicate that the reservation's radio system was to be the primary means of communication. Use of the radio system permits all members of a group to share information and provides for recording of conversations for subsequent analysis. Conversely, cell phone communication channels are not encrypted and are subject to eavesdropping, a weakness that could result in the disclosure of classified and/or critical security information. In this particular case, the lack of a complete record of vital communication may have adversely impacted management's ability to objectively and comprehensively analyze the events that unfolded on July 28.

Funding and Resource Allocations

Contractor officials expressed concern that constrained Federal funding had negatively impacted security controls at Y-12. For example, NNSA made a decision to eliminate some security features surrounding the HEUMF prior to completion of construction in 2008. Plans to install an additional delaying barrier were abandoned during construction. One official told us that the decision to exclude the delaying/prevention barrier was appropriate because of the security features of the HEUMF. Other officials told us that the feature, in place in the Protected Areas at other sites, was omitted because of budget considerations. The installation of barriers similar to those used in other portions of the Protected Area (as shown in photograph 1) would have complicated, delayed or perhaps even prevented the intrusion by the trespassers.

Photograph 1-Delay Barriers



(Source: NNSA Production Office Public Affairs)

Contractor officials told us that fiscal pressures impacted Protective Force patrols at Y-12. As with the rest of its complex, Y-12 was directed by NNSA in December 2011 to plan for reduced security funding. Headquarters NNSA officials told us that the reductions were primarily being made because of changes in the site footprint and new and enhanced technology. In response, the security contractor eliminated nightly interior patrols and reduced the number of roving patrols. The security contractor had also recently announced its intention to reduce Protective Force personnel levels by 70 people through voluntary and involuntary separations. Protective Force contractor officials indicated that the planned staff reductions were cancelled in response to the recent intrusion.

Officials noted that resources provided for maintenance were not sufficient to ensure that all needs were met. In particular, workers were responsible for maintaining existing facilities as well as completing the installation of technology required for the site's $85 million Security Improvement Program (SIP). Yet, as we were told, there was no increase in staffing levels. Contractor officials noted that maintenance assets were diverted to install security technology components. As a result, corrective maintenance backlogs grew and equipment repairs could not be completed in a timely manner.

Contract Management

NNSA's prime contract structure at Y-12 impeded the integrated management of the safeguards and security function. It also resulted in bifurcated lines of contractor accountability and responsibility. Specifically, NNSA's prime contract with the M&O contractor tasked it with the overall management and operation of safeguards and security activities at Y-12, including physical security systems and systems performance testing. However, Protective Force operations were specifically excluded from the M&O contractor's work scope. Instead, NNSA had a separate prime contract to provide Protective Force staff and training. Thus, physical security systems and security personnel were managed by completely different organizations.

The fractured management structure appeared to have led to conflicting priorities. For example, during implementation of the ongoing Y-12 SIP, the Protective Force contractor told us that it had surfaced a large number of concerns related to implementation of various security features, leading to its recommendation to delay implementation in some cases.

According to the M&O SIP Project Manager, a separate working group comprised of representatives from both the M&O and Protective Force contractors was formed to evaluate the Protective Force's concerns and inform the SIP Project Team of those that needed to be addressed within the project's scope. The working group identified a number of issues it considered to be security significant that required resolution. Nonetheless, the Project Manager determined that many of those issues did not impact the protections of the site's materials and, therefore, should be considered enhancements to be addressed by the M&O contractor's Security Systems group at a later date. The Project Manager was unable to tell us exactly how many items had been addressed at the time of the Y-12 incident.

Federal Oversight

Contractor governance and Federal oversight failed to identify and correct early indicators of the multiple system breakdowns that contributed to the incident. Specifically, since at least 2010, contractor governance reporting systems and Federal oversight efforts indicated that the site's physical security systems were functioning as intended. For example, site office quarterly reports provided to the Defense Nuclear Security Chief indicated positive performance of site physical security systems and the Protective Force. According to senior NNSA officials, the site office quarterly reports were based on the results of the contractors' self assessments. Similarly, NNSA's assessments of the contractor's physical security and Protective Force performance were rated at high levels based on analyses of the quarterly reports. In fact, senior NNSA officials told us that, prior to the recent incident, the site was considered to be one of the most innovative and higher performing sites in the complex. In commenting on a draft of our report, NNSA noted that a performance assessment performed in May 2012 by the Office of Health, Safety and Security indicated that the systems in place facilitated a high probability of detection of intruders. While we do not disagree with this statement, we noted that the review in question involved only the Y-12 alarm system and did not address the entire site security apparatus.

Despite the positive reports provided by the contractor and endorsements from Federal site managers, there were actually a number of known security-related problems at Y-12. For example, maintenance backlogs of critical security equipment were allowed to increase even though the M&O contractor had not performed any analyses to measure the effect of these problems and repair needs on the overall security posture. In particular, we learned that even though both contractor and Federal officials received a daily report of all degraded equipment, they did not perform the evaluations necessary to determine whether the outages, when considered in aggregate, would have impacted security for a significant segment of a facility or area.

As noted in previous OIG Management Challenges reports, Security and Safeguards across the complex warrant special attention by the Department. Our FY 2012 report found that both the OIG and the Government Accountability Office have identified that the Department's extensive Protective Force contingents were not uniformly managed, organized, staffed, trained or compensated throughout the complex. Given the exposure to risk in this area and the reality of the recent situation at Y-12, we believe that heightened and continued focus on Security and Safeguards is necessary.

Favorable Actions

Following the incident, Y-12 and NNSA took a number of actions designed to improve security at the site. For example, Y-12 implemented features designed to help reduce false alarms. Also, NNSA moved the site Protective Force contract from Federal control to the M&O contractor for Y-12. The site began installing additional fortifications around the HEUMF designed to further delay potential intruders. Finally, the NNSA issued a show cause letter to the M&O contractor

directing it to provide information as to why its contract should not be terminated in response to the demonstrated security weaknesses. As previously noted, the site has also initiated and in many cases completed repairs of most critical security equipment.

NNSA officials indicated they are in the process of completing a formal root cause analysis of the intrusion. They expected the report to be available soon and noted their intent to use it to solidify their overall corrective action approach. Finally, an extensive security evaluation, including performance testing, is scheduled to be conducted in the near future to validate the efficacy of corrective actions taken.

Additionally, officials told us that NNSA has recently established the NNSA Production Office (NPO) in order to provide more consistency in the oversight and administration of the Y-12 and Pantex production sites. Further, officials indicated that as a result of the recent security incident, they were reviewing the current oversight model to determine the reasons the governance model did not identify the weaknesses that contributed to the security incident at Y-12. Finally, management informed us that the NPO believed that approval of compensatory measures should have mirrored the process used at Pantex requiring Federal approval of such measures. For that and other reasons, officials were evaluating the process for reviewing and approving compensatory measures at Y-12 and plan to issue improved guidance in the near future.

Impact and Path Forward

The successful intrusion at Y-12 raised serious questions about the overall security approach at the facility. It also suggested that current initiatives to reduce Federal oversight of the nuclear weapons complex, especially as they relate to security functions, need to be carefully considered. Some observers went so far as to express the view that there were security culture problems at Y-12 creating an environment in which the July 28 intrusion could occur.

We perceived there to be a level of confidence in the quality of the Y-12 security apparatus that was unjustified. This may have led to a sense of complacency that was inconsistent with: (1) the unique status, mission and sensitivity of operations at Y-12 and its vital national security role; and, (2) the enormous investment of funds and resources in the security apparatus at the Y-12 complex to ensure its secure operations.

In addition to the issues described in our report, we provided management with additional, detailed information that was not included in our report due to security considerations. Other than pursuing our on-going criminal investigation activities, we plan to monitor the Department's progress in completing its formal root cause analysis of the event. If the situation warrants, we will issue supplementary reports on this matter.

RECOMMENDATIONS

Ironically, the Y-12 breach may have been an important "wake-up" call regarding the need to correct security issues at the site. Given the unprecedented nature of this security event, prompt

and effective corrective actions are essential. In that respect, in addition to the actions recently initiated, we recommend that the Under Secretary for Nuclear Security/Administrator, National Nuclear Security Administration:

1. Verify that all critical security equipment at Y-12 has been repaired and is operational;

2. Provide additional guidance on prioritizing equipment repairs and maintenance, and on the appropriate use of technology and communications protocols;

3. Determine whether critical security resource allocations are sufficient to meet demonstrated requirements;

4. Perform periodic in-depth reviews of contractor's security performance using a risk-based approach;

5. Evaluate the accuracy, quality, and completeness of information provided by contractors as part of the governance system and effect changes as necessary;

6. Clarify the NPO's authority under the governance model;

7. Ensure that NNSA Headquarters officials have full and complete information on the status of Y-12 security operations; and,

8. Prepare a lessons learned report that can be shared across the complex.

We noted that the senior leadership of both the Department and NNSA, recognizing the gravity of the security event at Y-12, has been personally involved in related fact finding and root cause identification efforts, including seeking solutions to any contributing institutional problems. As of the date of issuance of this report, inquiries concerning the July 28 Y-12 intrusion continue at a number of levels, both Federal and contractor. The Department's security apparatus has been charged with conducting a full scope review of the event and related circumstances and, ultimately, evaluating the status of the security posture at other agency facilities.

MANAGEMENT REACTION

NNSA management agreed to implement the report's recommendations. Management outlined a number of corrective actions it had initiated or completed. NNSA also indicated that in light of the problems at Y-12 it was conducting a complex-wide assessment of physical security to identify any corrective measures necessary to protect the Nation's most sensitive nuclear materials.

OFFICE OF INSPECTOR GENERAL RESPONSE

Management's comments were responsive to the report and its recommendations. As noted in the report, we will continue to monitor NNSA's progress in completing its analysis of the event and will issue supplementary reports if warranted.

Attachments

cc: Deputy Secretary
Associate Deputy Secretary
Administrator, National Nuclear Security Administration
General Counsel
Chief of Staff

Attachment 1

RELATED REPORTS

- Special Report on *Management Challenges at the Department of Energy – Fiscal Year 2012* (DOE/IG-0858, November 2011). As part of our annual report to identify the most significant challenges facing the Department of Energy (Department), we identified eight challenges and three areas for the "watch list" for Fiscal Year (FY) 2012. Specifically, the report identified contract and financial assistance award management as a management challenge and safeguards and security as an area that warrants special attention from Department officials. We also noted in our report that there may be significant economy of scale cost benefits associated with protective force contract consolidation that could encourage a more uniform and consistent approach to protective force organization, management, training, and equipment purchases.

- Special Report on *Management Challenges at the Department of Energy* (DOE/IG-0844, November 2010). As part of our annual report, we identified seven challenges and placed three areas on our "watch list" for FY 2011. Specifically, we noted that because of the number of contracts handled by the Department and the complexity and importance of the Department's numerous multi-million dollar projects, combined with new challenges created by the American Recovery and Reinvestment Act, contract and financial assistance award management was a significant management challenge. In addition, it was stated in our report that special emphasis on safeguards and security has remained a vital aspect of the Department's mission. In order to faithfully execute its mission of ensuring the safety of the country's nuclear weapons, the Department employs numerous security personnel, protects various classified materials and other sensitive property, and develops policies designed to safeguard national security and other critical assets. Ensuring that these safeguards are both efficient and effective require continuing focus to address this critical challenge.

- Inspection Report on *Y-12 National Security Complex Accountable Classified Removable Electronic Media Program* (INS-L-09-03, March 2009). The inspection was initiated to determine whether Y-12's accountable classified removable electronic media (ACREM) was managed, protected, and controlled consistent with applicable requirements. This review found that an unmarked hard drive had not been properly marked as Secret/Restricted Data and placed into accountability as ACREM, as required, and that 332 metallic flat discs and data tapes located in an ACREM safe may not have been properly controlled as ACREM. Since corrective actions were taken, no recommendations were made; however, we suggested that the Y-12 Site Office take action to ensure timely destruction of unneeded media was accomplished.

- Inspection Report on *Incident of Security Concern at the Y-12 National Security Complex* (DOE/IG-0785, January 2008). This review was initiated because we received an allegation that unauthorized portable electronic devices (including laptop computers) were introduced into a Limited Area which employs physical controls to prevent unauthorized access to classified matter or special nuclear material at Y-12 and that this breach in security was not properly reported. Our inspection substantiated the allegation and identified additional concerns related to the incident. Specifically, we found that Y-12 personnel discovered that an Oak Ridge National Laboratory employee had brought an unclassified laptop computer

into the Limited Area without following proper protocols, the cyber security staff had not properly secured the laptop, the incident was not reported until six days after it was discovered, and as many as 37 additional laptop computers may been improperly introduced into the Limited Area. We made several recommendations to further enhance the security of information systems and responses to incidents of security concern. In response, management identified corrective actions taken, initiated, or planned.

- Inspection Report on *Review of the Department of Energy's Canine Program at Selected Sites* (DOE/IG-0755, January 2007). We reviewed the Canine Programs at selected Department sites to determine whether they provided an adequate level of protection for personnel and facilities. During our inspection, we found that half of the canine teams observed failed the explosive detection portion of the operational evaluation, each of the canines observed failed to respond to at least one of the handlers commands, and the canines were not receiving the minimum number of hours of weekly training for explosive detection that were specified in the contractor's standards. Accordingly, we made recommendations to address the issues and enhance security and the comments and planned actions received were responsive to our recommendations.

- Inspection Report on *Concerns with Security Barriers at the Y-12 National Security Complex* (DOE/IG-0741, October 2006). Because we received an allegation that weapon port openings in newly constructed concrete security barriers at Y-12 were designed without the space required to accommodate the sight system of protective force weapons, we initiated an inspection. During our review, we substantiated the allegation and found that the original measurements of weapon ports in 90 concrete security barriers were undersized and unable to adequately accommodate the sight system on the protective force weapons. The weapon ports were subsequently modified. However, we concluded that based on the timing of the available information, the Protective Force contractor had the opportunity to send information to the managing and operating contractor correcting the sizing specification prior to construction, but failed to do so. Also, we found that the managing and operating contractor received payment of $525,000 for completion of three security upgrades even though two were completed after the date specified in the performance based incentive. We made several recommendations that included recouping amounts paid to the contractors and ensuring the items found in our inspection were addressed.

- Inspection Report on *Security Access Controls at the Y-12 National Security Complex* (DOE/IG-0691, June 2005). We initiated this inspection because we received information that non-U.S. citizens were improperly allowed access to a leased facility at the Y-12 complex. During our inspection we found that 16 foreign construction workers, using false documents, had gained access to the Y-12 site on multiple occasions and that control procedures at Y-12 facilities were not implemented. While we recommended that the Y-12 Site Office ensured that the revised access policy was fully and consistently implemented, we also recommended officials determine actions that may have been warranted Department-wide.

- Inspection Report on *Protective Force Training at the Department of Energy's Oak Ridge Reservation* (DOE/IG-0694, June 2005). This inspection was initiated because we received an allegation that a security police officer was given credit for training that was not received at the Oak Ridge Reservation. The inspection concluded that there were

material shortcomings in the implementation of the protective force training program. Specifically, we found that personnel spent about 40 percent less time on combat readiness refresher training than that specified in the training plan, planned training time was formally reported as actual training time, personnel routinely worked in excess of the maximum threshold for safe operations of 60 hours per week, and personnel signed attendance rosters for training not received. Because of the importance to the Nation's security, several recommendations were made to ensure the protective force is properly trained.

- Inspection Report on *Protective Force Performance Test Improprieties* (DOE/IG-0636, January 2004). The inspection was initiated at the Y-12 Site Manager's request to examine whether there had been a pattern over time of site security personnel compromising protective force performance tests. Our inspection confirmed that the results on a performance test may have been compromised as two protective force personnel were inappropriately permitted to view the computer simulations of four scenarios on the test. In addition, we were provided information that inappropriate actions had occurred going back to the mid-1980s in connection with performance tests at the Department's Oak Ridge complex. NNSA concurred with our findings and recommendations made in our report and provided a series of corrective actions that had been initiated or planned.

Attachment 2

MANAGEMENT COMMENTS

Department of Energy
National Nuclear Security Administration
Washington DC 20585
August 28, 2012

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM: THOMAS D'AGOSTINO
ADMINISTRATOR

SUBJECT: Response to the Inspector General's Special Report on "Inquiry into the Security Breach at the National Nuclear Security Administration's Y-12 National Security Complex

As Secretary Chu has made clear, the incident at Y-12 was a completely unacceptable breach of security and an important wake-up call for our entire complex – one we must correct and learn from to assure the absolute protection of this Nation's most sensitive nuclear materials. We have taken swift and decisive action to strengthen security and to replace key personnel, but these steps are just the beginning of the structural and cultural changes that we intend to make.

More specifically, in the days following this incident, the General Manager of the plant along with the leaders of the guard force were removed, and the guards who failed to detect the breach were suspended. Security cameras have been fixed, guard patrols have been increased, and the entire workforce is undergoing additional security training.

We have also issued a notice that requires the Y-12 contractor to show cause why termination proceedings should not be instituted for their management and operations contract for Y-12. We have also taken steps to consolidate responsibility for site operations and security under a single contract, so that there can be no more confusion between contractors about who bears responsibility for maintaining and integrating the physical and human security infrastructure that protects this facility.

We believe this incident raises important questions about the security of Category I nuclear materials across the DOE complex. To that end, we are conducting a complex-wide assessment of the physical security measures, personnel training and procedures, and chain of command to determine any corrective measures that may be necessary to protect this Nation's most sensitive nuclear materials.

We appreciate the timely and important work of the Inspector General in this case, fully endorse and will implement all of the recommendations in this report. Some have been acted on already and I will personally hold our team accountable for implementing the remaining items.

IG Report No. DOE/IG-0868

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2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?

3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?

4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report that would have been helpful?

5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

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