

ONE HUNDRED ELEVENTH 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
March 30, 2010

The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

We are writing with regard to a “Department of Energy 2010 Safety and Security Plan” recently reported in the press and described in a March 16, 2010, memorandum sent from the Department of Energy (DOE) Deputy Secretary Daniel Poneman to DOE senior management. According to Deputy Secretary Poneman, since 2009 the Department’s Office of Health, Safety and Security has been taking steps to reform its approach to enforcement and oversight of safety and security at DOE facilities. The objective of the plan appears to be to provide contractors with the flexibility to tailor and implement safety and security programs without excessive federal oversight or overly prescriptive Departmental requirements.

As you are aware, the Government Accountability Office (GAO) has conducted extensive reviews in the past relating to safety and security compliance at DOE sites. As GAO has documented in numerous reports and testimony before the House Energy and Commerce Committee, DOE has experienced significant challenges in the past managing effectively the many billions of dollars appropriated to the agency and the multiple projects which DOE is directed to carry out in both the civilian and defense areas. These challenges include documented concerns that DOE federal site offices, responsible for the day-to-day oversight of DOE contractors, may not have sufficient personnel with the necessary skills to manage and oversee effectively the work being performed by contractors at their sites. At the same time, contractor self-assurance and assessment systems may also be inadequate and/or not yet well developed to meet many of the Department’s tasks.

Post 9/11 reforms and a series of incidents the Committee investigated over the past decade at Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and

elsewhere focused needed attention on and prompted improvements in safety and security during the past Administration. Given the long history of DOE's management challenges and the grave safety and security risks within the nuclear weapons complex, it is imperative that DOE ensure safety and security-related improvements that are currently in place can continue and be sustained and that DOE be cognizant of lessons from past incidents and management failures. In light of this, we have concerns particularly about whether, and the extent to which, DOE should be taking steps now to outsource safety and security measures to contractors without strong federal oversight.

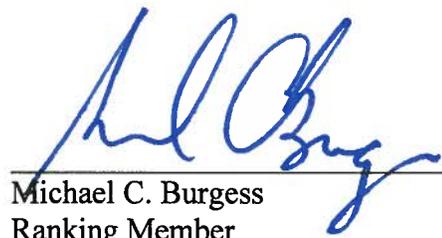
To address our concerns, we sent the attached request to GAO today to ask for its assistance in evaluating the Department's ongoing reform plan and related activities. In addition, we request that the Department (i) provide our Minority Committee staff with a briefing on the "Department of Energy 2010 Safety and Security Plan" and all related activities; and (ii) provide a written response with full information regarding any enforcement or oversight activities relating to safety and security that have been suspended during the past year, and assurances that suspension of those activities does not raise any security-related concerns.

Thank you for your prompt attention to this matter. If you have any questions related to this request, please contact Mr. Alan Slobodin of Minority Committee staff at (202) 225-3641.

Sincerely,



Joe Barton
Ranking Member



Michael C. Burgess
Ranking Member
Subcommittee on Oversight and Investigations

Attachment

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March 30, 2010

Mr. Gene L. Dodaro
Acting Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

Over the past year, Department of Energy (DOE) Secretary Steven Chu has initiated or supported a number of significant changes in the priorities, management and direction of the Department, including initiatives that relate to agency oversight at some of the nation's most sensitive national security facilities. In connection with these efforts, on March 16, 2010, Deputy Secretary Daniel Poneman issued a memorandum to DOE senior management describing initiatives the Department has taken to reform its approach to enforcement and oversight of safety and security, including at National Nuclear Security Administration (NNSA) facilities within the nuclear weapons complex.

The memorandum describes a "Department of Energy 2010 Safety and Security Reform Plan" and provides an "end-state vision" for such reforms and a schedule for plan implementation to be completed this year (see Attachment). The objective of the plan, as reflected in the end-state vision, appears to be to provide contractors with the flexibility to tailor and implement safety and security programs without excessive federal oversight or overly prescriptive Departmental requirements.

We write to request your assistance in evaluating DOE's ongoing safety and security reform plan and related activities. We have received reports that during the past year as part of its reform initiative:

- DOE's Office of Health, Safety and Security has suspended some independent inspections of DOE and NNSA facilities within the nuclear weapons complex;
- NNSA has suspended dozens of internal reviews and assessments; and

- NNSA and the Office of Science are implementing an oversight model at some of their sites that relies less on direct federal oversight and more on contractor self-assessment.

DOE carries out many of the nation's most critical national security-related missions, including stewardship of the nation's nuclear weapons stockpile and the environmental remediation of the Cold War era nuclear weapons complex. As the Government Accountability Office (GAO) has documented in numerous reports and testimony before the House Energy and Commerce Committee, DOE has experienced significant challenges over the years in managing effectively the many billions of dollars appropriated to the agency and implementing all of the multiple projects which DOE is directed to carry out in both the civilian and defense areas. These challenges include documented concerns that DOE federal site offices, responsible for the day-to-day oversight of DOE contractors, may not have sufficient personnel with the necessary skills to manage and oversee effectively the work being performed by contractors at their sites. At the same time, contractor self-assurance and assessment systems may also be inadequate and/or not yet well developed to meet many of the Department's tasks.

Post 9/11 reforms and a series of incidents the Committee investigated over the past decade at Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and elsewhere focused needed attention on and prompted improvements in safety and security during the past Administration. Given the long history of DOE's management challenges and the grave safety and security risks within the nuclear weapons complex, it is imperative that DOE ensure safety and security-related improvements that are currently in place can continue and be sustained and that DOE be cognizant of lessons from past incidents and management failures. In light of this, we have concerns particularly about whether, and the extent to which, DOE should take steps now to outsource safety and security measures to contractors without strong federal oversight. Accordingly, we request that GAO undertake a review of these reform initiatives with a focus on the following questions:

1. What is the factual justification and basis for embarking on these reforms and the management model or approach DOE senior management relies upon to drive these high-level initiatives?
2. What types of efforts have NNSA and DOE program and oversight offices launched in response to the Department's ongoing safety and security reform initiatives, and what is their implementation status?
3. What independent oversight activities relating to safety and security have been suspended as DOE has pursued its safety and security reform initiatives, and does the suspension raise any safety or security concerns?
4. Based on current progress and on the large body of work compiled by GAO, the DOE Inspector General, and a variety of DOE- and Congressionally-appointed commissions, what is the likelihood of success for the Department's current safety and security reform initiatives, and where might the Congress most usefully direct its oversight resources?

We request that GAO focus its efforts on NNSA because of its extensive contracting and project management activities and critical national security role and functions. In addition, we also request that GAO focus on DOE's Office of Health, Safety and Security, because we have

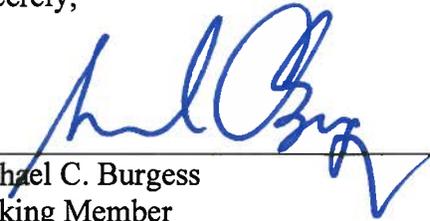
particular concerns about the implementation of the Secretary's initiatives in that office, which plays a key role in overseeing security and safety of DOE and NNSA operations.

Thank you for your assistance with this matter. If you have any questions, please contact Mr. Alan Slobodin with the Committee Minority staff at (202) 225-3641.

Sincerely,



Joe Barton
Ranking Member



Michael C. Burgess
Ranking Member
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Chairman

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

Attachment

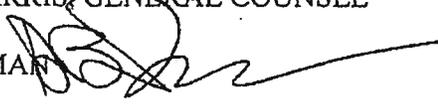


The Deputy Secretary of Energy
Washington, DC 20585

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

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.

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.

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

requirements by: 1) finalizing approval of the revised Unclassified Controlled Nuclear Information Order, 2) issuing a policy memorandum on Foreign Visits and Assignment, and 3) submitting a revised Accountable Classified Removable Electronic Media (ACREM) policy for Departmental review.	
Near-term cancellations: Initiate the Departmental review process to cancel the unneeded directives with the goal of completing the cancellations in April.	March 2010
Oversight and Enforcement: Redefine the HSS independent oversight and regulatory enforcement functions to achieve the end-state vision to include submitting a revision of DOE Order 470.2B, Independent Oversight and Performance Assurance Program for Departmental review.	May 2010
Worker Safety: Streamline the Department's worker health and safety, Integrated Safety Management, and Oversight directives for submittal for Departmental review. Pursue further identification of issues with the Department's worker safety regulations, 10 CFR 851 (that will then be evaluated through the rule making process).	May 2010
Classification: Streamline the Department's classification and information control directives within 90 days following the publication of the pending executive order (E.O.) for Controlled Unclassified Information and the President's Information Security Oversight Office (ISOO) implementing directives for E.O. 13526, Classified National Security Information.	Milestones based on the issuance of the E.O.
Environmental Management: Integrate the Department's environmental management and energy management directives, including adoption of ISO 14001 as the Department's standard for environmental management and the requirements of E.O. 13514 into one order for submittal for Departmental review by April. Also, due to the benefits achieved from Departmental review already conducted, complete the revision and issuance of the Radiation Protection of the Public and the Environment Order (DOE O 458.1) as scheduled in July.	July 2010, with interim milestones in April as specified
Quality Assurance: Streamline the Department's Quality Assurance directives for submittal for Departmental review.	July 2010
Operating Experience: Streamline the Department's operational experience and feedback directives into an integrated operational awareness and risk management approach for submittal for Departmental review.	August 2010
Nuclear Safety: Recognizing the importance of the Department's nuclear safety regulations and directives, a review will be conducted to clarify the existing relationship between regulation- and directive-driven requirements, address any identified gaps in requirements, and reduce unnecessary burden where there is no commensurate safety benefit. The review will be completed and the revised directives will be submitted for Departmental review by September. As part of this effort, the Defense	September 2010, with interim milestones in May as specified

<p>Nuclear Facility Safety Board will be consulted. Also, due to the benefits achieved from Departmental review already conducted, complete the revision and issuance of the four nuclear safety orders currently in Departmental review (DOE O 425.1D, DOE O 433.1B, DOE O 422.X, and DOE O 426.Y) as scheduled in May.</p>	
<p>Security: Streamline the Department's safeguards and security directives by leveraging the National Nuclear Security Administration Zero-Based Security Review (ZBSR) to update all related Departmental directives, by October, including submitting a revised Safeguards and Security policy for Departmental review in March and the updated Safeguards and Security Program order for Departmental review in June.</p>	<p>October 2010, with interim milestones in March and June as specified</p>