19 November 2001

Via E-mail and Facsimile

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of Environment
528 35th Street
Los Alamos, NM 87533

Dear Ms. Withers,

I am writing to convey some initial comments on the Predecisional Draft Environmental Assessment (EA, #1364) for the Proposed Biosafety Level 3 (BSL-3) Facility and Los Alamos National Laboratory (LANL).

1. The vague statement of purpose of the proposed BSL-3 as presented in this environmental assessment, in section 1.3, does not provide sufficient information for the agency alternatives to be clear and their environmental impact to be judged.

2. Given that one of the reasons for the press to do this work now is the recent terrorist attacks, it seems odd that the one thing not considered in the accident scenarios is a terrorist attack. Only considering "maximum credible events" and "reasonably forseeable" events seems inappropriate under the circumstances. Certainly the events of September 11 and the subsequent anthrax discoveries have dispensed with traditional estimates of what ought to be considered "reasonable".

3. While the members of the Bioscience Division have repeatedly stated that there will be no recombinant work, no vaccine work, no studies on dispersion effects or any other work related to use of weaponized agents, the scientists themselves do not choose the program. Yes, there is the Institutional Biosafety Committee (IBC) which meets once a year and discusses the approval of programs. The problem with this balancing system is that IBC meetings are, as they should be, open to the public and as a result certain information can be deemed "classified" under our new national security concerns. In fact, even when clearance is granted a "need to know" determination could still prevent details of projects from being disclosed. This being the case, some projects will not be open to public scrutiny and will bypass any system of checks.

4. The sample identification system, which can be seen as necessary for "blind" experiments, lends itself to compartmentalization of tasks and thus to the ability for work outside of the stated focus on defensive forensics to take place. The following appears on page 29 of the environmental assessment:

   > Samples and cultures would be identified by a numeric or alpha-numeric code rather than by the name of the microorganism or source. Sensitive information about samples and results would be maintained elsewhere at LANL in a safe and secure manner in accordance with applicable NNSA and LANL security requirements.

5. Forensics work alone does not justify a need for an onsite BSL-3 laboratory. Members of the Bioscience Division admit that it is cheaper to operate the way they do now and that the average wait time on sample receipt is one to three days. The only advantage to the onsite facility is being able to work with a greater volume and variety of organisms at once. However, when asked about the possibility of sample contamination onsite, the idea was dismissed because they "would not be working with that many different organisms at one time." Obviously there is still some debate on just how many organisms will need to be studied at one time and what the advantage of the onsite laboratory is for forensic work.

6. Forensics work is already being successfully accomplished by LANL without this laboratory and is purported to rely heavily on computer modeling techniques and use of attenuated organisms rather than requiring live organisms.

7. A 99.97% filtration integrity success is not sufficient where biological agents are concerned. As has been pointed out by a number of biological weapons experts, the consequences of releasing a biological agent into a new ecosystem can be enormous, long-standing, and unpredictable. Even 0.03% is not acceptable and especially not since there is no planned monitoring of the ventilation stacks.

8. The Inspector General's report does warrant pause in placing a BSL-3 laboratory at a facility with a history of violations in following CDC requirements, operating programs without the express knowledge of responsible parties in their own administration, and an administration whose overall efforts have been classified as disorganized and inconsistent.

9. The GAO's testimony released on October 5, 2001 regarding Bioterrorism - Coordination and Preparedness explained that coordination between all federal programs is "fragmented", lacks accountability, breeds duplicative efforts, and has no established authority for disciplinary action. Is it really wise for the DOE to contribute to this growing problem by adding a BSL-3 laboratory without consulting other federal agencies and spelling out the coordinated effort in advance? [GAO-02-129T, Statement of Janet Heinrich, Director, Health Care-Public Health Issues before the Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform, House of Representatives.]

November 19, 2001

Via Facsimile to 505-667-9998 and
U.S. Postal Service

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of Environment
528 35th Street
Los Alamos, NM 87544

Re: Comments on Predecisional Draft Environmental Assessment – DOE/EA-1364 "Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory"

Dear Ms. Withers:

Concerned Citizens for Nuclear Safety (CCNS) and the New Mexico Toxics Coalition (NMTC) oppose the predecisional draft Environmental Assessment (EA) for the proposed construction and operation of a Biosafety Level 3 (BSL-3) Facility at Los Alamos National Laboratory (LANL). The BSL-3 would significantly effect the human environment. The EA prepared by the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) lacks a full analysis of the environmental and human health impacts from the proposed BSL-3 facility. Because of the short time to review and comment on the predecisional draft EA, a sampling of some of the inadequacies are listed below.

CCNS and NMTC tried to obtain a copy of LANL's November 16, 2001 press release denying the public's request for an extension of time to review and comment on the EA, but we did not receive a response to our voice mail message. CCNS and NMTC object to the statements made by DOE as reported in the November 17, 2001 *Albuquerque Journal North* article. The DOE spokesperson said that DOE had received a lot of comments and that last spring it held a public meeting. The fact that DOE is receiving comments is inadequate justification for not extending the comment period. The public meeting last spring was part of the scoping process before the EA was prepared. 10 CFR 1021.311. The scoping comments should be considered but they should not serve as a substitute for comments that are directed to the review of the EA itself. 10 CFR 1021.320.

The DOE's implementing procedures for the National Environmental Policy Act (NEPA) are found at 10 CFR 1021. Subpart D of the implementing procedures allows DOE categorical exclusions from the preparation of an EA or environmental impact statement. However, under Appendix B to Subpart D to Part 1021, B3.12, Biosafety Level-3 and Biosafety Level 4 facilities are excluded from the exclusion. DOE/NNSA

was correct to prepare an EA. However, the EA is incomplete and does not support a finding of no significant impact (FONSI). Therefore, DOE/NNSA must prepare an environmental impact statement and issue a record of decision before taking action on the proposed BSL-3 facility. 10 CFR 1021.322

Furthermore, the proposed BSL-3 was not included in the *Site-wide Environmental Impact for Continued Operation of the LANL*. No major federal action should be undertaken by an agency that is not covered by an existing program statement. 40 CFR 1506.1(c). Therefore, DOE/NNSA must prepare an Environmental Impact Statement with opportunity for public comment and public hearing before taking action on the proposed BSL-3 facility.

Because the proposed action is one without precedent, CCNS and NMTC requests that if DOE/NNSA prepares a FONSI for the predecisional draft EA that the FONSI be available for public review and comment for 30 days before the final decision is made. 40 CFR 1501.4(e)(2)(ii), 10 CFR 1021.322(d).

The distribution of the predecisional draft EA was inadequate. The New Mexico Department of Health did not receive a copy, nor the Pueblos located along the transportation routes. Inadequate notification of major federal action violates the spirit of NEPA and does not "encourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 CFR 1500.2(d).

The documents supporting the EA were only made available after Nuclear Watch of New Mexico requested hard copies. Many of the supporting documents were removed from LANL's website since the EA was issued on October 29, 2001. A bankers box full of documents was delivered to Nuclear Watch on Friday evening, November 16, 2001. Time must be provided to review these documents and any referenced materials in those documents. The public should have the opportunity to provide educated comments based on the entire administrative record supporting the EA.

There are many significant unknowns and uncertainties in the draft EA. These include an incomplete analysis of the environmental and human health risks. DOE/NNSA propose using LANL's past experience with BSL-1 and BSL-2 laboratories to assign human health risk because "information on human health effects specifically related to BSL-3 laboratories located in the United States is not tracked in any formal manner (PC 2001c)." p. 58. LANL's past experience with BSL-1 and BSL-2 work is no guarantee of future experience with the proposed BSL-3. Substituting BSL-1 and BSL-2 past history for BSL-3 risks is unacceptable due to the increased number and hazardous levels of the bioagents involved. BSL-1 and BSL-2 laboratory data and anecdotal information from published reports do not provide adequate bases for the BSL-3 laboratory EA risk analysis. Complete analysis is lacking.

The EA lacks complete seismic activity and ground motion analyses. The proposed facility is located in an earthquake fault zone and volcanic area. According to the EA, the 1995 comprehensive seismic hazards study

> reports that faults in the TA-3 (Technical Area 3) show vertical displacements ranging from 1 – 10 feet (.03 to 3 m). While surface

ruptures indicated by near-surface vertical displacements can cause significant structural damage, surface rupturing earthquakes are low probability events. The 1998 study conclusions for the CMR building are that the probability of damaging ground motion is at least 20 times greater than the probability of damage caused by surface rupture. p. 53.

Prefabricated buildings are not earthquake proof nor are they consistent with the LANL Comprehensive Site Plan 2001 Planning Principles. Prefabricated building should not be included in any of the alternatives. More in-depth analysis of the seismic activity is required for any structure. The EA lacks analysis of damaging ground motion for any structure. Consideration of the proposed BSL-3 facility location in a volcanic area is also lacking.

The anticipated shipments to and from the proposed BSL-3 facility are 10 times greater than the current shipment level to and from LANL's existing BSL-2 laboratory. Diamond Drive and Pajarito Road would access the proposed facility and are highly traveled arteries between Los Alamos and White Rock. School buses travel these roads during the workweek. The increased number of shipments of microorganisms and related materials, and the fact that the proposed BSL-3 would be handling live and more dangerous microorganisms than a BSL-2 laboratory, creates increased security concerns and accidental release risks to public health and the environment. The EA lacks complete security and transportation risk analyses for the different transportation routes both on-site and through neighboring communities.

All three location options are in or near LANL's administrative area (TA-3) where one-half of LANL's employees work. The EA lacks complete analyses of the security and accident risks associated with the siting of a hazardous facility near large populations of workers, students, and the public.

At the November 14, 2001 public meeting in Los Alamos, we learned that there are four proposed locations within Option 1. The EA lacks complete analysis of these four proposed locations within Option 1 and they need to be analyzed.

There would be little discernable economic benefit to Northern New Mexico, or the State, from the proposed BSL-3 facility. Potentially, only five highly specialized permanent BSL-3 jobs would be created. The increased risk to public health and the environment could be substantial. Communities downwind and downstream from LANL have been burdened with risks from LANL's work with "special nuclear materials," hazardous materials and from the nuclear and chemical wastes stored or disposed on-site. This proposed BSL-3 facility would pose an unacceptable cumulative burden that has not been analyzed in the EA.

The proposed BSL-3 facility would create up to 50 pounds of potentially deadly waste every week, including contaminated clothing and petri dishes, that might be contaminated with infectious agents. The EA indicates that the waste would be autoclaved or be chemically treated, then disposed of as solid waste in the Los Alamos County landfill. The Los Alamos County landfill is scheduled to close in 2004, and no replacement facility has been approved. Depending upon the selected alternative, the

proposed BSL-3 facility would have a 20 to 30 year life. The EA lacks an analysis of where the waste would be disposed of after 2004.

Planning today will reduce tomorrow's long-term stewardship issues. The 2001 report, entitled *The Role of Local Governments in Long-term Stewardship at DOE Facilities*, defines long-term stewardship as

> The physical controls, institutions, information, and other mechanisms needed to ensure protection of people and the environment at sites where DOE has completed or plans to complete "cleanup" (e.g., landfill closures, remedial actions, removal actions, and facility stabilization). This concept of long-term stewardship includes, *inter alia*, land-use controls, monitoring, maintenance, and information management. p. 1.

Because of the foreseeable decontamination and decommissioning costs, future building disposal issues, and possible impacts to workers, DOE/NNSA must include an analysis providing evidence that no long-term stewardship issues would be involved at the time the BSL-3 facility closes. In addition, there are many proposals on the table for new construction at LANL. Planning now so that long-term stewardship issues will not be problems in the future is smart, cost-effective and environmentally sound.

In February 2001, the DOE Inspector General released a report that concluded that DOE's biological select agent activities suffered from "insufficient organization, coordination and direction." p. E-9. Also, DOE's activities "lacked sufficient Federal oversight, consistent policy, and standardized implementing procedures, resulting in the potential for a greater risk to workers and possibly others form exposure to biological…agents…maintained by the (DOE)." Id. The EA does not addressed the issues raised by the DOE Inspector General's report and should be analyzed.

It is unclear how the proposed BSL-3 facility will be incorporated into LANL's ten-year site plan prescribing space utilization activities as mandated by the Energy and Water Appropriations Bill Conference Report, Atomic Energy Defense Activities, NNSA, October 30, 2001.

There is substantial public concern about the proposed BSL-3 facility. DOE/NNSA should remember the outcry from the public and retired LANL workers against the proposed outdoor *Bacillus globigii* experiments at TA-33 during the summer of 1999. On July 8, 1999 LANL announced through a press release that it had canceled the planned tests.

DOE/NNSA should also remember that LANL is located on the Pajarito Plateau, which is in a major forest fire zone, in a seismically active area, above the largest fresh water artery in New Mexico, the Rio Grande. DOE/NNSA should take care to ensure that the cumulative effects of the proposed BSL-3 facility are fully analyzed.

The proposed BSL-3 facility would have significant cumulative human health and environmental impacts that are not addressed in the EA. Human error is not adequately addressed. CCNS and NMTC worked diligently to obtain an extension of

time to review and comment on the predecisional draft EA. Our comments are not complete.

The EA does not support a FONSI; therefore, DOE/NNSA should prepare an environmental impact statement with opportunity for public comment and public hearing. Thank you for your consideration of our comments. Should you have any questions or comments, please contact us.

Sincerely,

Joni Arends
Waste Programs Director
[redacted]

Coila Ash
Executive Director
[redacted]

Enclosures: 11/16/01 letter from Senator Bingaman to Elizabeth Withers
November/December 2001 *Bulletin of the Atomic Scientists* article entitled "Neither trust nor verify, says U.S."

Cc: Senator Jeff Bingaman
Senator Pete Domenici
Representative Tom Udall
Secretary Spencer Abraham
Deputy Manager, Program Execution John Arthur
LANL Area Manager David Gurule

Withers, Elizabeth

From: Penny McMullen[[redacted]
Sent: Monday, November 19, 2001 10:28 AM
To: Withers, Elizabeth
Cc: [redacted]
Subject: BSL-3

Penelope McMullen
Sisters of Loretto
[redacted]

Nov. 19, 2001

Ms. Elizabeth Withers
Office of Environment
528 35th St.
Los Alamos, NM 87544

Dear Ms. Withers:

I am opposed to the biosafety level 3 facility planned for Los Alamos National Laboratory for a number of reasons.

1) LANL has too long a history of mistakes, accidents, and safety violations, and of firing safety inspectors who find problems.

2) If such a facility is needed, it should not be at a weapons or DOE lab. The Inspector General's Feb. 2001 report, citing that some DOE laboratories were not adhering to the CDC requirements, does not give us confidence that LANL or any DOE facility can safely handle dangerous biological agents. This kind of research needs to be done by the Centers of Disease Control.

3) The United States last summer pulled out of the negotiations for monitoring compliance with the 1972 Biological and Toxins Weapons Convention treaty. As reported in the September 4, 2001, New York Times, the U.S. government admitted that it had already conducted two separate, secret projects simulating offensive bioweapons efforts. Because these projects were kept secret, the U.S. violated its 1986 commitment to declare the scope and purpose of any such activities. Having this research at a weapons facility adds to the perception that many have, around the world as well as in our own nation, that the United States intends to prepare bioweapons for offensive capability.

4) This proposal has been rushed through without giving the public who could be affected by such a facility at LANL an adequate chance to study the lengthy Draft EA. Three weeks is not sufficient time for interested citizens to meet and consult with independent experts.

5) The public has not received all the information required by law. Several local public advocacy groups requested almost 3 months ago, but had not received as of last week, documents pertaining to public health and safety issues at the current LANL BSL-2. Documents that were used in preparation of the BSL-3 EA have not been made available to the general public. One local public advocacy group who contributed extensive EA scoping comments on the proposed BSL-3 facility has yet to even receive the Draft EA on the

proposed BSL-3 facility. The Department of Energy's own Implementing Regulations state that "DOE shall make its NEPA [National Environmental Policy Act] documents available ... [to] interested groups, and the general public ..." (10 CFR 1021.301). The Council on Environmental Quality states that "No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment." (CEQ, 40 CFR 1502.21) To date, the DOE's obligations under NEPA have not been met, rendering it impossible for appropriate and educated written comment by the public. By rushing this proposal through in violation of regulations, the DOE has opened itself up to the possibility of a citizen class action lawsuit.

In summary, biowarfare research for defensive purposes needs to be conducted by the Centers of Disease Control, not at a DOE weapons facility.

Sincerely,
Penelope McMullen, SL

November 19, 2001

Via Facsimile to 505-667-9998 and
U.S. Postal Service

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NEPA Compliance Officer
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Furthermore, the proposed BSL-3 was not included in the *Site-wide Environmental Impact for Continued Operation of the LANL*. No major federal action should be undertaken by an agency that is not covered by an existing program statement. 40 CFR 1506.1(c). Therefore, DOE/NNSA must prepare an Environmental Impact Statement with opportunity for public comment and public hearing before taking action on the proposed BSL-3 facility.

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The EA does not support a FONSI; therefore, DOE/NNSA should prepare an environmental impact statement with opportunity for public comment and public hearing. Thank you for your consideration of our comments. Should you have any questions or comments, please contact us.

Sincerely,

Sue Dayton
Director/Coordinator

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Cc: Senator Jeff Bingaman
Senator Pete Domenici
Representative Tom Udall
Secretary Spencer Abraham
Deputy Manager, Program Execution John Arthur
LANL Area Manager David Gurule

November 19, 2001

Via Facsimile to [redacted] and
U.S. Postal Service

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of Environment
528 35th Street
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The distribution of the predecisional draft EA was inadequate. The New Mexico Department of Health did not receive a copy, nor the Pueblos located along the transportation routes. Inadequate notification of major federal action violates the spirit of NEPA and does not "encourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 CFR 1500.2(d).

The documents supporting the EA were only made available after Nuclear Watch of New Mexico requested hard copies. Many of the supporting documents were removed from LANL's website since the EA was issued on October 29, 2001. A bankers box full of documents was delivered to Nuclear Watch on Friday evening, November 16, 2001. Time must be provided to review these documents and any referenced materials in those documents. The public should have the opportunity to provide educated comments based on the entire administrative record supporting the EA.

There are many significant unknowns and uncertainties in the draft EA. These include an incomplete analysis of the environmental and human health risks. DOE/NNSA propose using LANL's past experience with BSL-1 and BSL-2 laboratories to assign human health risk because "information on human health effects specifically related to BSL-3 laboratories located in the United States is not tracked in any formal manner (PC 2001c)." p. 58. LANL's past experience with BSL-1 and BSL-2 work is no guarantee of future experience with the proposed BSL-3. Substituting BSL-1 and BSL-2 past history for BSL-3 risks is unacceptable due to the increased number and hazardous levels of the bioagents involved. BSL-1 and BSL-2 laboratory data and anecdotal information from published reports do not provide adequate bases for the BSL-3 laboratory EA risk analysis. Complete analysis is lacking.

The EA lacks complete seismic activity and ground motion analyses. The proposed facility is located in an earthquake fault zone and volcanic area. According to the EA, the 1995 comprehensive seismic hazards study

> reports that faults in the TA-3 (Technical Area 3) show vertical displacements ranging from 1 – 10 feet (.03 to 3 m). While surface ruptures indicated by near-surface vertical displacements can cause significant structural damage, surface rupturing earthquakes are low probability events. The 1998 study conclusions for the CMR building are that the probability of damaging ground motion is at least 20 times greater than the probability of damage caused by surface rupture. p. 53.

Prefabricated buildings are not earthquake proof nor are they consistent with the LANL Comprehensive Site Plan 2001 Planning Principles. Prefabricated building should not be included in any of the alternatives. More in-depth analysis of the seismic activity is required for any structure. The EA lacks analysis of damaging ground motion for any structure. Consideration of the proposed BSL-3 facility location in a volcanic area is also lacking.

The anticipated shipments to and from the proposed BSL-3 facility are 10 times greater than the current shipment level to and from LANL's existing BSL-2 laboratory. Diamond Drive and Pajarito Road would access the proposed facility and are highly traveled arteries between Los Alamos and White Rock. School buses travel these roads during the workweek. The increased number of shipments of microorganisms and related materials, and the fact that the proposed BSL-3 would be handling live and more dangerous microorganisms than a BSL-2 laboratory, creates increased security concerns and accidental release risks to public health and the environment. The EA lacks complete security and transportation risk analyses for the different transportation routes both on-site and through neighboring communities.

All three location options are in or near LANL's administrative area (TA-3) where one-half of LANL's employees work. The EA lacks complete analyses of the security and accident risks associated with the siting of a hazardous facility near large populations of workers, students, and the public.

At the November 14, 2001 public meeting in Los Alamos, CCNS and NMTC learned that there are four proposed locations within Option 1. The EA lacks complete analysis of these four proposed locations within Option 1 and they need to be analyzed.

There would be little discernable economic benefit to Northern New Mexico, or the State, from the proposed BSL-3 facility. Potentially, only five highly specialized permanent BSL-3 jobs would be created. The increased risk to public health and the environment could be substantial. Communities downwind and downstream from LANL have been burdened with risks from LANL's work with "special nuclear materials," hazardous materials and from the nuclear and chemical wastes stored or disposed on-site. This proposed BSL-3 facility would pose an unacceptable cumulative burden that has not been analyzed in the EA.

The proposed BSL-3 facility would create up to 50 pounds of potentially deadly waste every week, including contaminated clothing and petri dishes, that might be contaminated with infectious agents. The EA indicates that the waste would be autoclaved or be chemically treated, then disposed of as solid waste in the Los Alamos County landfill. The Los Alamos County landfill is scheduled to close in 2004, and no replacement facility has been approved. Depending upon the selected alternative, the proposed BSL-3 facility would have a 20 to 30 year life. The EA lacks an analysis of where the waste would be disposed of after 2004.

Planning today will reduce tomorrow's long-term stewardship issues. The 2001 report, entitled *The Role of Local Governments in Long-term Stewardship at DOE Facilities*, defines long-term stewardship as

> The physical controls, institutions, information, and other mechanisms needed to ensure protection of people and the environment at sites where DOE has completed or plans to complete "cleanup" (e.g., landfill closures, remedial actions, removal actions, and facility stabilization). This concept of long-term stewardship includes, *inter alia*, land-use controls, monitoring, maintenance, and information management. p. 1.

Because of the foreseeable decontamination and decommissioning costs, future building disposal issues, and possible impacts to workers, DOE/NNSA must include an analysis providing evidence that no long-term stewardship issues would be involved at the time the BSL-3 facility closes. In addition, there are many proposals on the table for new construction at LANL. Planning now so that long-term stewardship issues will not be problems in the future is smart, cost-effective and environmentally sound.

In February 2001, the DOE Inspector General released a report that concluded that DOE's biological select agent activities suffered from "insufficient organization, coordination and direction." p. E-9. Also, DOE's activities "lacked sufficient Federal oversight, consistent policy, and standardized implementing procedures, resulting in the potential for a greater risk to workers and possibly others form exposure to biological…agents…maintained by the (DOE)." Id. The EA does not addressed the issues raised by the DOE Inspector General's report and should be analyzed.

It is unclear how the proposed BSL-3 facility will be incorporated into LANL's ten-year site plan prescribing space utilization activities as mandated by the Energy and Water Appropriations Bill Conference Report, Atomic Energy Defense Activities, NNSA, October 30, 2001.

There is substantial public concern about the proposed BSL-3 facility. DOE/NNSA should remember the outcry from the public and retired LANL workers against the proposed outdoor *Bacillus globigii* experiments at TA-33 during the summer of 1999. On July 8, 1999 LANL announced through a press release that it had canceled the planned tests.

DOE/NNSA should also remember that LANL is located on the Pajarito Plateau, which is in a major forest fire zone, in a seismically active area, above the largest fresh water

artery in New Mexico, the Rio Grande. DOE/NNSA should take care to ensure that the cumulative effects of the proposed BSL-3 facility are fully analyzed.

The proposed BSL-3 facility would have significant cumulative human health and environmental impacts that are not addressed in the EA. Human error is not adequately addressed.

The EA does not support a FONSI; therefore, DOE/NNSA should prepare an environmental impact statement with opportunity for public comment and public hearing. Thank you for your consideration of our comments. Should you have any questions or comments, please contact us.

Sincerely,

Sue Dayton
Director/Coordinator

Enclosures: 11/16/01 letter from Senator Bingaman to Elizabeth Withers
November/December 2001 *Bulletin of the Atomic Scientists* article entitled "Neither trust nor verify, says U.S."

Cc: Senator Jeff Bingaman
Senator Pete Domenici
Representative Tom Udall
Secretary Spencer Abraham
Deputy Manager, Program Execution John Arthur
LANL Area Manager David Gurule

[redacted] November 19, 2001 [redacted]

The Honorable Spencer Abraham
Secretary
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
VIA FAX 202-586-7644

Dear Secretary:

A number of my constituents have raised concerns regarding the predecisional draft Environmental Assessment (EA) for the proposed Biosafety Level 3 (BSL-3) Facility at Los Alamos National Laboratory. They have suggested that the Department of Energy (DOE) and National Nuclear Security Administration (NNSA) have not completed a full analysis of the environmental and health impacts of the proposed facility.

I understand that in addition, the BSL-3 was not included in the *Site Wide Environmental Impact Statement for Continued Operation of the LANL*, thus requiring the DOE and NNSA to prepare a full Environmental Impact Statement with opportunity for public comment and public hearing. Concerns such as an analysis of increased transportation risk for the communities along the transportation routes, as well as proposed disposal sites from BSL-3 waste are outstanding considerations that must be addressed and the public must be informed on these issues.

I respectfully request that the DOE and NNSA complete a full Environmental Impact Statement of the proposed BSL-3 facility and extend the comment period from 21 days to 120 days.

I look forward to your expeditious reply on this matter. Your assistance is greatly appreciated. If you should have any questions, please contact Sarah Cobb, at [redacted] She can be reached at [redacted]

Yours Truly,

Tom Udall
Member of Congress

Phone Log - E. Withers

Voice mail message left: 11:05am 11/21/01

? no name? [redacted]

- the public is totally uninformed of DOE's plans
- everyone is against it 100% percent
- no one was informed

Phone Log

Date of Call Fri 12/21/01 Time of Call 3:08pm

Name of Recipient Elizabeth Withers Name of Caller Virginia Miller in Santa Fe, NM

Subject: BSL-3

please extend the public comment period for 120 days and prepare full EIS for the "Bioweapons"-3 laboratory and ask that you follow through on this.

Phone Log

Date of Call 12/20/01

Time of Call Thurs. 10:06 am

Name of Recipient Elizabeth Withers

Name of Caller ~~Anonymous~~ voice mail

Subject: BSL-3

I understand there is a 30 day extention on BSL-3 & appreciate that. Request a 120 day extention and a full EIS complete with some public hearings. Don't understand why with something this critical and dangerous - this wasn't an automatic. Also understand there have been line anthrax spores shipped to LA; and a lot of cooking ugs going on. Just want to make you aware that some of us plebian people do know about things and please continue with the study of this incredibly idiotic project.

Signed: Elizabeth Withers

Withers, Elizabeth

From: Morrie Pongratz[redacted]
Sent: Thursday, December 20, 2001 8:47 PM
To: [redacted]
Cc: [redacted] Withers, Elizabeth; [redacted]
Subject: BSL-3: Who speaks for Los Alamos?

Councilors,

First it was Greg Mello of the "Los Alamos" Study Group objecting to the proposed BSL-3 facility. Next it was Rep. Tom Udall and Sen. Jeff Bingham. Then Rep. Edward Markey (from Massachusetts no less) regurgitated Greg Mello's objections. Then in the 12/18 Monitor I read that Peggy Prince and Jay Coghlan are speaking for our community objecting to the BSL-3 facility. Now I see (12/20 Monitor) that Chris Mechels has come to the defense of the poor voiceless citizens of Los Alamos!

Chris mentions concerns of LANL's "transparency" and "openness." I'm all for "transparency" and "openness." Has anyone ever learned where the "Los Alamos" Study Group and the Nuclear Watch of New Mexico get their funding? What's good for the goose is good for the gander? Pot calling the kettle black?

Seriously, in my fourteen years on the County Council, I had the impression that I was elected to represent the citizens of Los Alamos. I don't recall the citizens of Los Alamos giving that mandate to Greg Mello. The reason that the Greg Mello's, Peggy Prince's and Jay Coghlan's of the world appear to be speaking for me is that our County Council has abdicated to them.

I urge the County Council to schedule a public hearing regarding the BSL-3 facility, invite Jill Trewhella to testify and go on record with a roll call vote speaking for our citizens regarding the proposed BSL-3 facility. This is still a democracy isn't it?

Morris B. Pongratz
[redacted]

"No man is an island intire of itselfe, every man is a piece of the Continent, a part of the maine; if a clod bee washed away by the Sea, Europe is lesse, as well as if a promontorie were, as well as if a mannor of thy friends or of thine owne were; any man's death diminshes me, because I am involved in Mankinde; and therefore never send to know for whom the bell tolls; it tolls for thee."

From Devotions upon Emergent Occasions by John Donne

December 20, 2001

Elizabeth Withers
DOE
Los Alamos, NM 87544

Dear Ms. Withers:

I do not believe that national security as you and your colleagues understand it, is at all possible.

I do not believe that continuing to unlock the Pandora's Box of atomic/chemical/biological warfare will *somehow* lead to peace in the world.

I do not believe that the proposed BSL-3 facility is at all conducive to the health and safety of New Mexico or US citizens.

I do not believe that the DOE or LANL are telling us the truth.

I do not believe that the DOE can objectively and truthfully complete an EA *of its own behavior and development*.

I do not believe the CAB was really an objective and impartial group which was listening at all to our concerns at its February meeting in Taos.

I do not believe that the continued development of biological weapons (which is what this BSL is really about) would deter other nations from doing the same.

I do not believe that LANL has *ever* had a concern for my safety and welfare.

I do not believe that terrorism is our nation's worst threat.

I do not believe that your scientists have a clue what they're doing, just like the ones who worked on the bomb in the 40's.

I do believe that when the US finally lays down its arms, other nations will do the same.

I do believe that any accident at LANL or the BSL could potentially devastate all life on Earth (read *The Stand* by Stephen King).

I do believe that our health and safety would be more secure by not only disallowing this facility, but by the discontinued production and use of nuclear weapons and the dismantlement of LANL.

I do believe that Bush's vow to pull out of the ABM treaty is terribly dangerous to world stability and security.

I do believe that the several-hundred page EA which was sent to me by your department was useless because of the inability of the average layperson to read or understand it. How about a summary?

I do believe that the nation-state known as the US is, as a whole, contributing to its own demise because of all the harm it continues to do to the environment, its own citizens, and the peoples of the world.

Please do not increase this harm by allowing this facility to be built.

In peace,

S. Shuker

S. Shuker
[redacted]

Phone log - E. Withers

voice-mail message left:

11/20/01 David Donaldson

[redacted]

Is concerned about the BSL-3 letter. DOE needs to extend the comment period.

Phone log - E. Withers

voice-mail message left:

11/20/01 @ 10:59am

Betsy Ewartz [redacted]

This BSL-3 action is dangerous, no matter what is said in the EA, to have in the State. NM is a fairly pristine state and having this facility would make us like NY, DC or LA. Hopes that Sen. Bingaman's letter has weight.

Phone log: E. Withers

voice mail message left:

11/20/01 12:37pm

Renee' Hardy [redacted]

- disappointed that 120 day review period was denied
- wants more information [nonspecific]
- project is not a good thing because don't know much about it.

Phone Log – E. Withers

voice mail message left:

11/20/01 11:53am

Gayle Rayburn [redacted]

- Extend the public comment period by 120 days
- hold formal public hearings
- Senator Bumgarner's letter requests the same

Phone Log

Date of Call 12/21/01 Time of Call Today 10:35am

Name of Recipient Elizabeth Withers Name of Caller Jeanie Zandie
Taos, NM

Subject: "BSL-3 license request"

I'd like to urge you to grant the 120 days comment period and perform full EIS.

Signed: Elizabeth Withers

Phone Log - E. Withers

Voice-mail message left:

11/20/01 10:04am

Susanne Swartz [redacted]

① extend the comment period by 120 days
② hold formal hearings in Taos & Santa Fe
③ Senator Bingaman's letter requesting an extention was sent to DOE

Phone Log - E. Withers

Voice mail message left: 11:05am 11/21/01

? no name? [redacted]

- the public is totally uniformed of DOE's plans
- everyone is against it 100% percent
- no one was informed

Phone Log

Date of Call Fri 12/21/01 Time of Call 3:08pm

Name of Recipient Elizabeth Withers Name of Caller Virginia Miller in Santa Fe, NM

Subject: BSL-3

please extend the public comment period for 120 days and prepare full EIS for the "Bioweapons"-3 laboratory and ask that you follow through on this.

Phone Log - E. Withers

voice mail message left:

8:32 am 11/21/01 Jerry Kaugh

[redacted]

- Extend the comment period by 120 days
- Sen. Bingaman's letter requests this

Phone log - E. Withers

voice mail message left:

11/21/01 12:27pm

? no name ? [redacted]

- public hearings need to be held
- Taos is directly affected

Nancy Florsheim

[redacted]

Dec. 23, 2001

Dear Ms. Withers,

Thank you for your letter of December 14. I would like to go on record as opposing establishment of a BSL-3 facility at LANL. I do not think LANL's record of protecting the environment and providing security for its activities warrent trust. Such a lab should be constructed and operated at an institution that has demonstrated reliability.

Sincerely,

Nancy Florsheim

November 22, 2001

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of Environment
528 35th Street
Los Alamos, NM 87544

Re: Predecisional Draft Environmental Assessment - DOE/EA-1364 "Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory"

Dear Ms. Withers:

The predecisional draft Environmental Assessment (EA) for the proposed Biosafety Level 3 (BSL-3) Facility at Los Alamos National Laboratory (LANL) will not support a finding of no significant impact. The Department of Energy (DOE) and National Nuclear Security Administration (NNSA) did not complete a full analysis of the environmental and human health impacts of the proposed facility in the EA. In addition, the BSL-3 was not included in the Site-wide Environmental Impact for Continued Operation of the LANL; therefore, DOE/NNSA must prepare a full Environmental Impact Statement with opportunity for public comment and public hearing.

There are many unknowns and uncertainties in the draft EA. These include an incomplete analysis of the human health risks where DOE/NNSA proposes using LANL's past experience with BSL-1 and BSL-2 laboratories to assign risk because "information on human health effects specifically related to BSL-3 laboratories located in the United States is not tracked in any formal manner…." Other unknowns and uncertainties include where the BSL-3 waste would be disposed of, a complete seismic activity analysis, and increased transportation risk analysis for the communities along the transportation routes.

The 21-day comment period is too short for a complete review of the large EA. I request a 120-day comment period on the EA.

Sincerely,

Andy Goad ANDY GOAD

Name

[redacted]

Address

[redacted]

City, State, ZIP

Phone Log

Date of Call Dec. 26, 2001 Time of Call Wed. 8:45am

Name of Recipient Elizabeth Withers Name of Caller Stuart Everby

Subject: BSL-3 lab

Calling for you to grant the full 120 day extention for comment on the BSL-3 lab and its essential for a full EIS ~~to~~ done in this situation." I hope you won't let fear of ___ in this regard ___ we become our own enemies."

Signed: Elizabeth Withers

phone log - E. Withers

voice-mail message left:

11/23/01 @ 5:07 pm

Mellisa Rossen [redacted]

- there was no comment period - this needs a 120-day review
- more public hearings are needed
- opposed to the BSL-3 lab

November 26, 2001

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of Environment
528 35th Street
Los Alamos, NM 87544

Re: Predecisional Draft Environmental Assessment - DOE/EA-1364 "Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory"

Dear Ms. Withers:

The predecisional draft Environmental Assessment (EA) for the proposed Biosafety Level 3 (BSL-3) Facility at Los Alamos National Laboratory (LANL) will not support a finding of no significant impact. The Department of Energy (DOE) and National Nuclear Security Administration (NNSA) did not complete a full analysis of the environmental and human health impacts of the proposed facility in the EA. In addition, the BSL-3 was not included in the Site-wide Environmental Impact for Continued Operation of the LANL; therefore, DOE/NNSA must prepare a full Environmental Impact Statement with opportunity for public comment and public hearing.

There are many unknowns and uncertainties in the draft EA. These include an incomplete analysis of the human health risks where DOE/NNSA proposes using LANL's past experience with BSL-1 and BSL-2 laboratories to assign risk because "information on human health effects specifically related to BSL-3 laboratories located in the United States is not tracked in any formal manner...." Other unknowns and uncertainties include where the BSL-3 waste would be disposed of, a complete seismic activity analysis, and increased transportation risk analysis for the communities along the transportation routes.

The 21-day comment period is too short for a complete review of the large EA. I request a 120-day comment period on the EA.

Sincerely, E Barkey

E. Barkey
Name

[redacted]
City, State, ZIP

November 26, 2001

Ms. Elizabeth Withers
NEPA Compliance Officer
Office of the Environment
DOE LAAO
528 35th Street
Los Alamos, NM 87544

Dear Ms. Withers,

Nuclear Watch of New Mexico submits the following comments on the draft Environmental Assessment (EA) (DOE/EA-1364) for Proposed Biological Safety Level (BSL)-3 Laboratory at Los Alamos National Laboratory (LANL).[1]

Comment Period on the draft Environmental Assessment

Nuclear Watch of New Mexico (NWNM) strongly objects to the imposed comment period as a whole and believes that the length of the comment period was far too short for a project with the size of scope as that outlined in the draft EA on the proposed BSL-3 facility. NWNM received notice from your office on November 6, 2001 of the opening of the comment period on October 30, 2001 and that it was scheduled to end November 19, 2001.[2] Your letter did not include the draft (EA), despite NWNM's submittal of substantial scoping comments to your office on July 10, 2001 and August 2, 2001.[3] NWNM was forced to write to your office to request a hard copy of the EA, which did not arrive until November 12, 2001, a mere 7 days before the close of the comment period.[4]

There has also been extensive public interest to extend the comment period, including two requests to that effect from U.S. Senator Bingaman (D-N.M.). Senator Bingaman stated that "An extension of the public comment period could strengthen the quality of the project and may [*sic*] in the best interest of enhancing the public process."[5] U.S. Representative Tom Udall also requested an extension to the public comment period, saying that "Concerns such as an analysis of ... proposed disposal sites from BSL-3 waste are outstanding considerations that must be addressed and the public must be informed."[6] Additionally, your office failed to honor requests from the public to hold a formal public meeting on the draft EA. The Council on Environmental Quality (CEQ) states that

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1 Predecisional Draft Environmental Assessment for the Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico, DOE/EA-1364, October 29, 2001.

2 Personal Correspondence to Jay Coghlan, Nuclear Watch of New Mexico from Elizabeth Withers, DOE LAAO, October 29, 2001.

3 "Nuclear Watch of New Mexico's Scoping Comments to the DOE for the Environmental Assessment on LANL's Proposed Biological Safety Level 3 Laboratory," July 10, 2001. "NWNM Addendum to its July 10, 2001 Scoping Comments," August 2, 2001.

4 Personal Correspondence e-mail to Elizabeth Withers, DOE LAAO, from Colin King, NWNM. Subject: BSL-3 Draft EA. November 7, 2001.

5 Personal Correspondence to Elizabeth Withers, DOE LAAO, from Senator Jeff Bingaman, U.S. Senate, November 16, 2001.

6 Personal Correspondence to Spencer Abraham, Secretary, DOE, from Representative Tom Udall, U.S. House of Representatives, November 19, 2001.

"Agencies shall … Make diligent efforts to involve the public in preparing and implementing their NEPA [National Environmental Policy Act] procedures … [and that agencies shall] Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is: … substantial interest in holding the hearing."[7] This statement by the CEQ legally binds all Federal agencies, including the Department of Energy's (DOE) National Nuclear Security Administration (NNSA). An additional public meeting or hearing would have required your office to extend the public comment period, yet you chose to ignore both the CEQ regulations and the many written requests to hold an additional public meeting. Senator Bingaman wrote in his second letter that "It has become clear to me that the community would like to put forth additional comments to enhance the Environmental Assessment and the project as a whole." He also stated that "It seems that the decision not to extend the public comment period was made without the benefit of comments received during the final days of the planned 21-day comment period."[8]

The unwillingness of your office to honor the requests by the public to hold an additional public meeting and or extend the comment period for the draft EA severely undermines the stated purpose of NEPA.

> It is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to *use all practical means and measures*, … in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.[9]

Furthermore, your decision may have an adverse impact on the quality of written comment from the public. The importance of public input into the NEPA process can be demonstrated by pointing to a recent example when the authors of these comments wrote in their comments to the Draft Site-Wide Environmental Impact Statement (SWEIS) that the hazards of wild fires had not been fully assessed at LANL.[10] The authors' worst fears came true when Northern New Mexico witnessed the terrible destruction of the May 2000 Cerro Grande Fire. Much of that destruction could have been avoided had LANL fully addressed and implemented a wild fire control and mitigation plan.

The Need for a Programmatic EIS
For the NNSA's Chemical and Biological National Security Program

The National Nuclear Security Administration (NNSA), lead agency for the LANL BSL-3 Draft EA, has already initiated a well defined program through its Chemical and Biological National Security Program (CBNP). The CBNP is rapidly growing, for example: "Significant progress was made over the past year; partly because program funding was doubled from the FY99 level" [11] and

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7 CEQ 40 CFR 1506.6 (a), (c) 1.
8 Personal Correspondence to Richard Glass, DOE Albuquerque Operations Office, from Senator Jeff Bingaman, U.S. Senate, November 19, 2001.
9 (NEPA § 101. (*Emphasis added*)
10 "CCNS Review of the Draft LANL SWEIS, June 1998, p. 15, Jay Coghlan and Colin King.
11 CBNP FY00 Annual Report, NNSA Office of Nonproliferation Research and Engineering, p. 1.

the "CBNP budget increased from $18.5 M in FY 99 to $40.0 M in FY00 and retained that increase for FY01 ($42.1 M)." [12] Nor does the CBNP funding tally appear to capture the total cost for DOE activities with biological select agents. The DOE Office of Inspector General estimates that "the cost in FY 2000 of the Department's biological agent-related activities was in excess of $90 million."[13] In any event, total program funding will no doubt dramatically increase in FY02 following the recent terrorist and anthrax attacks.

This program is not new. As the NNSA states "The CBNP was initiated in 1997" with a clear "mission focus" for which "the development of requirements is a complex challenge involving governmental and non-governmental organizations at national, state and local levels."[14] The NNSA has developed a CBNP Strategic Plan [15] and recognizes that future "programmatic challenges" exist.[16] DOE Albuquerque officials have on at least one occasion undertaken "programmatic review of pertinent program documents." [17] (Emphases added.) The CBNP is multi-laboratory and spread across the nation. Those facilities identified by the DOE Office of Inspector General as having conducted biological experiments are the Brookhaven, Lawrence Berkeley, Lawrence Livermore, Los Alamos, Sandia-CA, Sandia-NM, Oak Ridge, Pacific Northwest and Idaho Engineering and Environmental National Laboratories.[18] Additionally, "Department laboratories are conducting Work-for-Others programs, Laboratory Directed Research and Development projects, and Cooperative Research and Development Agreement projects involving biological select agents and select agent materials." [19] As further indication of the reach of its potential impacts, the CBNP has already experimented on a large metropolitan and geographical area (Salt Lake City and the Great Salt Lake Basin).[20]

In sum, the CBNP is a large and rapidly growing program to which the NNSA has already committed "irretrievable resources." The program has numerous facilities located across the country that, by virtue of the materials that they work with, can have large potential impacts that could "significantly" affect the "human environment." [21] Yet, in what appears to be a clear violation of the National Environmental Policy Act (NEPA), the CBNP has not undergone public programmatic review. In these comments, Nuclear Watch of New Mexico attempts to make clear that that programmatic review is required.

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12 Ibid, p. 45.
13 "Investigation of Department of Energy Activities Involving Biological Select Agents," DOE/IG-0492, February 2001, p. 4.
14 The last three quotes are from the CBNP FY00 Annual Report, NNSA Office of Nonproliferation Research and Engineering, p. 5.
15 Ibid, p. 11.
16 Ibid, p. 48.
17 "Investigation of Department of Energy Activities Involving Biological Select Agents," DOE/IG-0492, February 2001, p. E-17.
18 Ibid, see pp. 16, 17 and 30.
19 Ibid, p. 4.
20 CBNP FY00 Annual Report, NNSA Office of Nonproliferation Research and Engineering, p. 167 - 170.
21 The last three quotes are phrases repeatedly used in the National Environmental Policy Act (NEPA) and implementing regulations. NEPA requires federal agencies to evaluate the potential environmental consequences of any proposed "major federal action." NEPA may require the preparation of an environmental assessment or a more comprehensive environmental impact statement. In the case of a proposed program, a broad programmatic environmental impact statement might be required (as Nuclear Watch of New Mexico argues in these comments).

In February 2001 the DOE Office of Inspector General released a report entitled "Inspection of Department of Energy Activities Involving Biological Select Agents." Under RESULTS OF INSPECTIONS, that office concluded:

> [T]he Department's biological select agent activities lacked organization, coordination, and direction. Specifically, the Department's activities lacked appropriate Federal oversight, consistent policy, and standardized implementing procedures, resulting in the potential for greater risk to workers and possibly others from exposure to biological select agents and select agent materials.[22]

As a result of its inspections the DOE IG Office made four primary recommendations to the DOE Under Secretary for Energy, Science, and Environment and the DOE Under Secretary for Nuclear Security [i.e., the NNSA]. The DOE IG Office recommended them to jointly:

1. Identify the types and locations of activities being conducted by the Department involving biological select agents and select agent materials.
2. Initiate actions to ensure: (a) appropriate federal oversight; (b) consistency in policy; and (c) standardization of implementing procedures for biological select agent activities being conducted by the Department. Actions would, for example, could include encouraging more interagency cooperation in this area and, similar to the approach taken by the United States Army, supplementing CDC [Centers for Disease Control and Prevention] guidance regarding activities involving biological select agents and select agent materials to address situations unique to DOE.
3. Ensure that required NEPA reviews are conducted prior to the start of biological select agents and select agent materials and revised, as needed, when significant changes occur in the activities.
4. Initiate appropriate action to ensure the Department's laboratories, including those managed by the NNSA, receive timely and consistent information regarding CDC guidelines.[23]

The DOE IG report states that the Acting Director of the NNSA Chemical and Biological National Security Program generally concurred with all four recommendations. Specifically on the issue of NEPA compliance, the DOE IG report says that the "Acting Director stated that the Department is required to comply with NEPA. He stated that the Department will 'continue to address biological research within individual laboratory annual planning summaries and otherwise according to Department requirements' to ensure that that appropriate consideration is given to NEPA compliance early in the planning process." [24] (Emphases added.)

On the subject of "otherwise according to Department requirements," DOE NEPA Implementation Regulations, Sec. 1021.330, "Programmatic (including Site-wide) NEPA Documents," states:

> (a) When required to support a DOE programmatic decision (40 CFR 1508.18 (b) (3)), DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4). (Emphasis added.)

[22] "Investigation of Department of Energy Activities Involving Biological Select Agents," DOE/IG-0492, February 2001, inspection transmittal letter to the DOE Secretary.
[23] Ibid, p. 25.
[24] Ibid, p. 27.

> (b) A DOE programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ regulations and this part.

The above referenced 40 CFR 1508.18 (b) (3), "Major Federal action," states

> (b) Federal actions tend to fall within one of the following categories: …
>
> (3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

The above referenced 40 CFR 1502.4, "Major Federal actions requiring the preparation of environmental impact statements," states

> (a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.
>
> (b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 150.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking. (Emphasis added.)

The above referenced 40 CFR, Sec. 1508.25, "Scope," states

> To determine the scope of environmental impact statements agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:
>
> 1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: …
>
> (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

Under "Purpose and Need for Agency Action " the Draft LANL BSL-3 EA says that "DOE conducts bioscience work at LANL in support of its national NNSA security and science missions and in support of the CBNP [Chemical and Biological National Security Program] …NNSA needs BSL-3 laboratory capability located at LANL." Thus, it is self-evident that the proposed LANL BSL-3 is an interdependent part of a larger federal action, which is the NNSA's Chemical and Biological National Security Program. In turn, the proposed LANL BSL-3 laboratory depends upon that program for its justification. It is also self-evident that the CBNP is a major federal action that has the potential to significantly affect the human environment. Just because the CBNP is an ongoing program that has not yet been programmatically reviewed under NEPA does not excuse it now from review. As NEPA states: "Actions include the circumstance where the responsible officials fail to act and that failure is reviewable by courts or administrative tribunals under the Administrative Procedures Act or other applicable law as agency action." [25]

[25] 40 CFR 1508.18, "Major Federal action."

The Department of Energy declares that "It is DOE's policy to follow the letter and spirit of NEPA; comply fully with the CEQ [Council on Environmental Quality] regulations; and apply the NEPA review process early in the planning stages for DOE proposals."[26] In contradiction, DOE's NEPA history is replete with major violations and failures to act.[27] Our present concern is further heightened by revelations that the NNSA's Chemical and Biological National Security Program has already arguably violated NEPA procedures at two of its facilities, the Chem-Bio Facility under construction at the Oak Ridge National Laboratory (proposed as a BSL-3 facility but without an environmental assessment) and a facility at Sandia-NM (whose original scope of work had significantly changed without related NEPA review).[28]

DOE was forced by citizens to prepare a Stockpile Stewardship and Management (SSM) PEIS for public review of Departmental proposals to consolidate and revitalize its nuclear weapons complex. That 1996 document said:

> This PEIS has been prepared in accordance with section 102(2)(c) of the *National Environmental Policy Act* (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), and implemented by regulations promulgated by the Council on Environmental Policy (CEQ) (40 CFR 1500-1508) and DOE regulations (10 CFR 1021). Under NEPA, Federal agencies, such as DOE, that propose major actions that could significantly affect the quality of the human environment are required to prepare an environmental impact statement (EIS) to ensure that environmental information is available to public officials and citizens before actions are taken. For broad actions, such as the Stockpile Stewardship and Management Program, a PEIS is prepared. [29] (Emphasis added.)

Under the same NEPA requirements it should be noted that the DOE has also prepared a Waste Management PEIS, a Storage and Disposition of Weapons-Usable Fissile Materials PEIS and a Tritium Supply and Recycling PEIS.

From the perspective of required programmatic review under NEPA, Nuclear Watch of New Mexico asserts that there is little difference between the Stockpile Stewardship and Management Program and the Chemical and Biological National Security Program. Both were explicitly new programs involving the significant commitment of irretrievable resources and potentially significantly affecting the human environment. Yet one received programmatic NEPA review and one still has not. We hereby make the claim that the NNSA is required under NEPA to prepare a CBNP PEIS, and the agency should act quickly to do so.

Despite what seem to be clear NEPA requirements, the NNSA may still be loath to undertake a CBNP PEIS. The NNSA should be aware that public comment can be of great direct benefit to the agency. One example is that when DOE prepared a draft LANL Site-Wide EIS in 1998, this writer

[26] 10 CFR, Chapter X, Part 1021 - "DOE NEPA Implementing Procedures," Sec. 1021.101 "Policy."

[27] This writer has intimate knowledge of 1) DOE's past failure to prepare a new LANL Site-Wide EIS, 2) DOE's past failure to produce a Stockpile Stewardship and Management PEIS, 3) DOE's failure to prepare an Environmental Restoration PEIS, and 4) DOE's past failure to prepare an EIS for LANL's Dual Axis Radiographic Hydrotest Facility. As a co-plaintiff he successfully litigated against DOE on the last two issues.

[28] "Investigation of Department of Energy Activities Involving Biological Select Agents," DOE/IG-0492, February 2001, p. 23.

[29] Final Programmatic Environmental Impact Statement for Stockpile Stewardship and Management, DOE, September 1996, p. S-5.

commented that the risk of wildfire was completely omitted (an incredible omission!). DOE subsequently included in the 1999 Final LANL Site-Wide EIS a risk analysis of a model fire that eerily matched the all-too-real Cerro Grande Fire of 2000. As a result, the lab took some fire prevention measures that, among other things, helped to keep the waste dumps and storage areas at Technical Area-54 from burning. In the informal words of the director of the LANL's fire rehabilitation project the existence of that wildfire risk analysis saved the lab three critical days in determining appropriate emergency response measures while the fire raged. That analysis would not have existed without the NEPA process and related public comment.

Should the NNSA amicably agree to prepare a CBNP PEIS, Nuclear Watch of New Mexico contends that the SSM PEIS can serve as a useful model in a number of ways. First of all, the SSM PEIS provided a forum in which DOE could lay out its rationale and justification for the SSM Program. This is of analogous importance to the CBNP in that one of the major concerns expressed by the public over the proposed LANL BSL-3 facility is the propriety of locating a biological research facility at an institution whose historic mission has been the research and development of deliverable nuclear weapons. At the same time this is an issue that the mere appearance of which can be of international significance. LANL has emphatically and repeatedly denied that its future BSL-3 facility would ever be used for offensive purposes. A CBNP PEIS would help to lay the programmatic foundation for such assurances. Moreover, a CBNP PEIS could help build public and international confidence through discussion of the international treaty framework governing biological select agents and by institutionalizing transparency measures for the entire program under that framework.

Another way that the SSM PEIS can serve as a useful model is that that document served both as a programmatic review and facility-specific review. This is to suggest that in the course of a CBNP PEIS the NNSA could simultaneously prepare the programmatic review that we believe NEPA clearly requires and still move forward as appropriate in the NEPA process for the LANL BSL-3 facility.

A CBNP PEIS can also serve to promote needed interagency cooperation. To again quote the DOE IG Office's second recommendation, the NNSA should:

> 2. Initiate actions to ensure: (a) appropriate federal oversight; (b) consistency in policy; and (c) standardization of implementing procedures for biological select agent activities being conducted by the Department. Actions, for example, could include encouraging more interagency cooperation in this area and, similar to the approach taken by the United States Army, supplementing CDC guidance regarding activities involving biological select agents and select agent materials to address situations unique to DOE.

Related to this, under Operations the Draft LANL BSL-3 EA states:

> The BSL-3 facility would be operated according to all guidance and requirements established by the CDC and NIH (CDC 1999)… The CDC is the supporting governmental agency under the HHS responsible for the management of the Laboratory Registration/Select Agent Transfer (LR/SAT) program and would be the main point of contact for LANL's Facility Responsible Official.

In Nuclear Watch of New Mexico's view, the CDC should be designated as a "cooperating agency" in a CBNP PEIS (and, for that matter, in the LANL BSL-3 EA), and not merely as a "supporting agency." As the lead agency in this NEPA process, the NNSA should request that designation.[30] The NNSA should be advised that to have the CDC's active participation in these NEPA processes would undoubtedly go a long ways towards alleviating public concerns over safety and health issues. In addition, given that the CDC is reportedly chronically underfunded, the NNSA should help financially support the CDC in any role that it might play as a cooperating agency.

Again in reference to the DOE IG's second recommendation (specifically to the phrase "similar to the approach taken by the United States Army") it needs to be noted that the U.S. Army prepared and released in April 1989 a Final Programmatic Environmental Impact Statement on its Biological Defense Research Program (BDRP).[31] Under "Description of the BDRP," the Army states that the "objectives of the BDRP are to develop measures for detection, treatment, protection and decontamination of potential biological warfare threat agents."[32] In a broadly similar mission, the "DOE Chemical and Biological National Security Program (CBNP) was initiated in FY1997 to engage the DOE and its laboratories more fully in the development and demonstration of new technologies and systems to improve U.S. domestic preparedness and response capabilities to chemical and biological attacks."[33] Like the Army's program, the NNSA's Chemical and Biological National Security Program is multi-facility across the nation, with the potential for significant impacts on the human environment. The Army found its PEIS "an excellent approach for considering unscheduled, unidentified future implementing actions that may have environmental impact," [34] acknowledged that the "jurisdiction" of its PEIS was "[n]ationwide," [35] and fulfilled its statutory NEPA obligations through the completion of its PEIS. In Nuclear Watch of New Mexico's view the DOE is under the same NEPA obligation to prepare a PEIS on its Chemical and Biological National Security Program, and should proceed to do so without delay.

The NNSA may perhaps argue that the present national security climate following the September 11 and anthrax attacks does not allow for the "luxury" of a programmatic EIS on its Chemical and Biological National Security Program. Even though we too recognize the increasing need for enhancing national defenses against the threat of chemical or biological attack, Nuclear Watch of New Mexico would argue otherwise. Obviously other governmental programs now exist (even present day activities at LANL) that are addressing current issues. Also obvious is the fact that all federal agencies, even in today's security climate, are still obliged to comply with NEPA. Moreover, as the SSM PEIS illustrates, programmatic review and facility review can still occur simultaneously. Therefore, the preparation of a PEIS is not an insurmountable obstacle to the NNSA's pursuit of a

[30] As provided for by 10 CFR (DOE NEPA Implementing Regulations) Sec. 1021.342, "Interagency cooperation" and 40 CFR (CEQ Regulations for Implementing NEPA), Sec. 1506.6, "Cooperating agencies."

[31] Although it is not completely clear, apparently the Army's decision to prepare a PEIS was forced by citizen litigation under NEPA in Foundation on Economic Trends v. Weinberger. See Final PEIS on the Biological Defense Research Program, U.S. Army, April 1989, p. 1-7.

[32] Ibid, p.ES-1.

[33] Draft LANL EA, p. 2.

[34] Final PEIS on the Biological Defense Research Program, U.S. Army, April 1989, p. ES-3. This is relevant to a future DOE CBNP PEIS because as the Draft LANL BSL-3 EA states "other [DOE} facilities [specifically Sandia and Lawrence Livermore National Laboratories] may consider the construction and operation of BSL-3 facilities in the future." (p. 35.)

[35] Final PEIS on the Biological Defense Research Program, U.S. Army, April 1989, cover sheet.

BSL-3 facility at LANL. Further, we contend that NNSA preparation and completion of a CBNP PEIS, besides meeting legal obligations under NEPA, will serve to improve the program, specific facilities (such as the proposed LANL BSL-3 facility), interagency cooperation and public relations. We again urge the NNSA to fulfill its NEPA obligations by preparing a programmatic EIS for its Chemical and Biological National Security Program in a timely manner.

Comments Specific to the Draft LANL BSL-3 Environmental Assessment

Purpose and Need Misleading

Los Alamos National Laboratory (LANL) has a fairly lengthy history of conducting biological work at its current biological safety level (BSL) 2 facility. The current BSL-2 facility is part of a complex wide Department of Energy (DOE) National Nuclear Security Administration (NNSA) program called the Chemical and Biological National Security Program (CBNP). Two other laboratories operated by the NNSA, Sandia National Laboratories (SNL) (New Mexico and California) and Lawrence Livermore National Laboratories (LLNL) operate BSL-2 facilities that support the mission of the CBNP. In a January 2000 document, LLNL states that "A window of opportunity for aggressively building LLNL's biology program exists … A foundation for the expanded effort would be national security … [which] motivate why biology is done at LLNL. The collective life-science activities at LLNL currently represent over $50 million in funding …"[36] The draft EA for LANL's proposed BSL-3 facility claims that "LANL's pioneering technologies and capabilities … are unique."[37] LLNL, as well as SNL, could argue just as effectively that their own biological research programs are "unique," and that those programs equally support the strategic mission of the CBNP, as well as other DOE operated laboratories which support the CBNP "detection programs" such as Pacific Northwest National Laboratory.[38] The draft EA misleads members of the public and decision makers when it asserts that programs at LANL are unique. The section entitled "Purpose and Need for Agency Action" or another section of the EA must extensively address how the biological programs are unique at LANL specifically and how these programs are unique within the context of the support to the CBNP that they provide.

The second principal point for the justification of the proposed BSL-3 under "Purpose and Need for Agency Action" is that NNSA does not have "off-site" BSL-3 capable facilities readily at their disposal. The EA must provide an analysis of past NNSA research that has been conducted at off-site facilities. The EA must justify DOE's purpose and need for action by clearly documenting past experiences, cost-analysis of those activities versus activities that would be conducted at the proposed BSL-3 at LANL, and lessons learned from its off-site biological research efforts must be included.

[36] "2020 Foresight, Forging the Future of Lawrence Livermore National Laboratory, the Report of the Long-Range Strategy Project," UCRL-LR-137882, January 2000. http://www.llnl.gov/tid/lof/documents/pdf/238249.pdf

[37] Predecisional Draft Environmental Assessment for the Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico, DOE/EA-1364, October 29, 2001, Section 1.3, p. 9

[38] Chemical and Biological National Security Program FY00 Annual Report, p. 24.