

# Tri-Valley CAREs

Communities Against a Radioactive Environment

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Tri-Valley CAREs, Nuclear Watch New Mexico, and Savannah River Site Watch are three public interest organizations that submitted timely and substantive comments on the Draft Supplement Analysis (SA) of the 2008 Complex Transformation Supplemental Programmatic Environmental Impact Statement pursuant to the agency's plan to expand plutonium pit (bomb core) production from the currently authorized limit of "up to" 20 pits per year to a new limit of 80 pits per year "or more" at two locations that are approximately 1,500 miles apart, the Los Alamos National Laboratory (LANL) in NM and the Savannah River Site (SRS) in SC.

We three signatory groups have reviewed the final SA and submit these comments on it for the record during the 30-day period that is required before a Record of Decision (ROD) can be issued. The groups' prior comments are incorporated here by reference, as they were not adequately addressed in the Final SA.

Below, we offer comments that could only be submitted pursuant to the issuance of the Final SA as they deal with its content. We request that the agency respond to these comments in writing prior to a ROD.

## **Transportation**

- The SA fails to consider transportation-related impacts other than the transportation of pits between each production site and Pantex. As such, the SA fails to consider numerous important issues, such as the prospect that plutonium may be shipped between LANL and SRS, or between these sites and some site other than Pantex. Likewise, the SA fails to consider critical issues such as the transportation of plutonium or other hazardous materials to LANL and SRS, as well as the additional impacts associated with additional waste streams.

## **Wastes**

- The SA summarily asserts that there will be sufficient capacity at the Waste Isolation Pilot Plant (WIPP) to meet TRU waste needs stemming from pit production. The SA fails to consider the likely impacts associated

with the limitations on WIPP. Because the WIPP is likely to be at or near its capacity in the foreseeable future, the agency has an obligation under NEPA to take a hard look at the likely impacts of the expansion of plutonium pit production, and in particular the likelihood that this expansion will yield wastes for which DOE will not have the capacity to assure disposal.

- Compounding the SA's incorrect assumption that WIPP has the capacity to meet all of the TRU waste needs from expanded pit production is a further assumption in the final document that hazardous radioactive wastes can be stored safely at the LANL and SRS production sites. However, the SA fails to consider the full range of risks and impacts associated with storing these hazardous and radioactive wastes at the same sites where DOE is proposing to produce pits, including risks associated with natural disasters such as earthquakes or wildfires. If hazardous and radioactive wastes are stored in the same areas or facilities that will be producing pits, then the risks associated with storing these wastes must be analyzed in connection with the risks associated with production, because these risks will exacerbate one another: for example, a fire in a production area could spread to a waste-containment area, or vice versa.

### **Connected Action**

- The SA still does not discuss the pit needs of specific weapons programs as the purpose and need for the facilities that will be carrying out the expanded pit production program. The SA relies on general platitudes about aging and maintaining the stockpile. It does not analyze the W87-1 program, and whether it is needed, or whether new pits are necessary for the weapon, or whether there are alternatives, including within the design space for that weapon type. Further, the SA does not examine whether the W87-1 program is connected, or respond to Tri-Valley CAREs' comment that the W87-1 as currently contemplated is without NEPA analysis - and that it is a connected action. Without a coherent purpose and need, the entire expanded pit production proposal makes no logical sense and fails to comply with NEPA.

- The SA contends that the NNSA intends to amend the existing Complex Transformation SPEIS ROD to adopt a Modified DCE Alternative. This approach makes no sense in light of the numerous significant changes to DOE's nuclear weapons program and new information that has come to light since 2008, such as the significant safety problems at LANL or the construction fraud associated with the MFFF at SRS. Likewise, this approach does not comport with DOE's own precedents, because DOE has under similar circumstances prepared numerous Supplemental Environmental Impact Statements for the nuclear weapons program. Additionally, the DCE Alternative did not contemplate the dual site proposal in the way it is now being proposed, meaning that DOE cannot logically rely on the data and analysis used in the 2008 document. Additionally, NNSA is not now taking an "EIS" level look at alternatives, despite the fact that other alternatives might now exist that were not analyzed in 2008. This is proven by the fact that NNSA's dual site proposal did not exist in 2008.

- Inexplicably, the SA lists ten discrete sites/operations that are part of its current plutonium pit program yet fails to analyze how expanded production using two sites more than a thousand miles apart might produce additional or unique impacts involving these sites/operations individually or collectively.

- The SA also contends that it need not analyze whether the proposal will increase the likelihood of a return to nuclear explosive testing at some yield, or the impacts of that testing. It claims that it is outside the scope, despite the potential for newly designed pits produced at LANL and SRS to contribute substantially to, if not cause outright, warhead certification and/or unique pit aging complications due to insertion of novel (never before used) surety or other mechanisms into the pit material. This is one concrete example of a planned change that goes unexamined in the SA despite the fact it creates divergence from tested designs and

stockpile experience. This is an especially significant failure because a nuclear test of any yield will have extreme negative impacts, both on the environment and on international relations.

- The SA purports to respond to comments that identified deficiencies in DOE's failure to engage in a holistic analysis of its plans for expanded plutonium pit production by stating that the agency will conduct various "site-specific NEPA analyses." However, this approach not only fails to respond meaningfully to the comments, but also further illustrates how the agency is engaging in an inappropriate segmentation of these plainly connected and interrelated activities. As explained in numerous comments on the draft SA, these activities must be analyzed in a Programmatic EIS, which would afford DOE and the public the opportunity to evaluate all of the impacts associated with these activities and to consider programmatic alternatives that would reduce adverse impacts. This segmentation frustrates the public's ability to adequately analyze the scope and impact of the connected action (increased plutonium pit production) and inhibits their ability to comment on and participate in decision-making. In sum, the agency has made a decision against an in-depth programmatic analysis in the SA and subsequently has determined it will not undertake a full review for pit production at LANL either.

### **New Information**

- The agency essentially asserts that waiting for the Seismic Analysis of Facilities and Evaluation of Risk project at LANL, which is conducting a detailed, multi-year analysis of the seismic design loads on existing facilities within the Plutonium Complex, and waiting for future seismic analysis to be done in the LANL SA is somehow sufficient despite the known increase in seismic hazard potential and the rapid pace that is being proposed to begin the increased Plutonium Pit Production at LANL. This approach violates NEPA's procedures for accounting for incomplete or unavailable information. See 40 C.F.R. 1502.22.

- The responses to comments similarly assert that the problems with criticalities, wildfires and other hazards at LANL's PF-4 did not need to be analyzed in this document because they will be in the LANL SA if they are relevant. This approach fails to take the hard look at relevant impacts that NEPA requires, and unlawfully avoids consideration of the cumulative impacts associated with producing pits at multiple locations, especially because expanded pit production makes the risks associated with PF-4 more significant. These cumulative impacts require consideration in an EIS or PEIS. By improperly segmenting out site specific impacts and risks, the agency is skirting NEPA's requirements that a hard look at all impacts of a connected action be analyzed in a single document, and is instead wrongfully relying on a more cursory SA when an P/EIS is plainly required.

- Similarly, the responses to comments state "The SRS Pit Production EIS will evaluate, in more detail, the potential waste generation and impacts for these waste types associated with the production of at least 50 pits per year in a refurbished MFFF. Similarly, the site-specific LANL SA will analyze the potential waste generation and impacts for these waste types associated increased production." This again improperly segments analysis relevant to the program. Here again, commenters were deprived of the opportunity to analyze the full or cumulative impacts of the proposed project.

### **1998 Court Order**

- The SA fails to consider the 1998 court order mandating an SPEIS under circumstances that have been triggered by the agency's current expanded pit production program. The SA also fails to respond to multiple comments regarding the order, including those submitted by organizations that had obtained it. The SA says merely, "With regard to the 1998 court order, NNSA supplemented the SSM PEIS consistent with that court

order. See also comment response numbers 12, 13, and 16.” Further, comment response numbers 12, 13 and 16 all address topics unrelated to the court order. This is a matter of deficiency not pagination, as no other response numbers carried any agency reply or analysis or even mention of the 1998 court order.

### **Faulty Inclusion of Comments and/or Commenters**

- The SA did not include all commenters. For example, Nuclear Watch New Mexico was not included despite its timely submittal of voluminous, original comment material. A brief survey conducted by the groups submitting this SA comment yielded additional individuals and groups asserting that they had submitted comments but were not included either. It is the responsibility of the agency to transparently demonstrate it has captured and responded to all public comment. The agency has failed that fundamental requirement.

We appreciate this opportunity to submit comments on the Final SA during the 30-day period that must precede a ROD and we look forward to the agency’s responses. If there are any questions, we stand ready to help.

Sincerely,

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