

Tri-Valley CAREs

Communities Against a Radioactive Environment

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*Peace Justice Environment
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By e-mail to: NEPALASO@doeal.gov

Mr. John Tegtmeier, CMRR-NF SEIS Document Manager
Department of Energy - Los Alamos Site Office
3747 West Jemez Road
Los Alamos, NM 87544

Re: Tri-Valley CAREs' Public Scoping Comment on the Dept. of Energy National Nuclear Security Administration's "Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at the Los Alamos National Laboratory (LANL)..."

Dear Mr. Tegtmeier:

Tri-Valley CAREs is a non-profit organization founded in 1983 by Livermore, California area residents to research and conduct public education and advocacy regarding the potential environmental, health and proliferation impacts of the Lawrence Livermore National Laboratory and other sites in the U.S. nuclear weapons complex.

Due to concerns in our community about the negative environmental, health, non-proliferation, economic and security implications of increasing U.S. nuclear weapons production capabilities, Tri-Valley CAREs submits the following scoping comments for the Chemistry and Metallurgy Research Replacement-Nuclear Facility (CMRR-NF) on behalf of its 5,600 members, including members who have moved to NM.

Tri-Valley CAREs is very concerned about the proposed addition to LANL's nuclear weapons production complex, especially the CMRR-NF. Since the original 2003 Environmental Impact Statement (EIS) for the facility, significant conditions have changed and/or been proposed for the U.S. nuclear weapons complex, including but not limited to those related to the New START treaty, which may be ratified in the near future.

Tri-Valley CAREs believes that a full re-examination of the "purpose and need" under the National Environmental Policy Act (NEPA) for the CMRR-NF is necessary. This should be accomplished through the preparation of a new EIS. It is of concern to us that a Supplemental EIS is an insufficient vehicle for re-examination of "purpose and need." A Supplemental EIS is also insufficient given the expanded scope of the CMRR-NF.

Further, it is premature to conduct the scoping process pursuant to a Supplemental EIS when Dept. of Energy (DOE) Secretary Chu has asked for an independent expert committee to review the "need" for the CMRR-NF.

At a minimum, this present public scoping process should not end before that Secretarial review is completed and made public. Moreover, the Secretary's review should become (a) part of the DOE National Nuclear Security Administration's (NNSA) consideration of whether a full EIS or a Supplemental EIS is undertaken and (b) part of the Administrative Record in either event.

In the event the DOE NNSA decides to proceed with a full EIS or proceeds with this Supplemental EIS, the following comments on the scope of that review apply:

1. Other Reasonable Alternatives are Required in the Pending NEPA Document (Whether an EIS or Supplemental EIS).

The Notice of Intent to prepare this Supplemental EIS contains three options: the so-called "no action" alternative (which is to build the CMRR-NF and its ancillary and support activities per the old EIS Record of Decision), an Alternative 1 (which is to continue to use the CMR Building with no facility upgrades beyond routine maintenance), and Alternative 2 (similar to Alternative 1 but with extensive CMR upgrades).

The decision whether to construct and operate a new CMRR-NF does not (and should not) hinge on the substantial, continued use of the old CMR Building for decades to come.

Tri-Valley CAREs is suspicious that DOE NNSA has constructed the above-listed alternatives in such a manner as to facilitate declaring in the final document that major programmatic activities in CMR for decades to come is not a good solution and, therefore, the only option is to proceed with the full CMRR-NF as planned. In reality, that's a "Hobson's Choice" and there are reasonable alternatives that do not depend on either a new CMRR-NF or substantial long-term programmatic use of the old CMR.

Here is an additional, reasonable option that must be fully analyzed in the pending draft EIS or draft Supplemental EIS.

Given that the CMRR Radiological Laboratory Utility and Office Building (RLUOB) is built and is slated to become operational within 2 years, its capabilities must be taken into account. Further, given that the CMRR-NF is not slated to be completed until about 2020, other relevant LANL activities between the present and 2020 must be included in the analysis. (In other words, the issue is not merely what LANL could do differently today, it is what LANL could reasonably do differently by 2020 that must be considered in the NEPA analysis). In this context, LANL's PF-4 must be considered in conjunction with the CMRR RLUOB.

That analysis must take into account that PF-4 presently holds equipment that need not stay until 2020, such as the ARIES "pilot project," which was never supposed to be permanent there. Additionally, PF-4, we were told by LANL management, has other space that could be available in the future but which presently holds contaminated plutonium wastes in acid, a waste management issue that is waiting to be dealt with.

Therefore, a reasonable alternative could be to devote a small portion of the massive resources that would have been used to construct the CMRR-NF to clean up and clean out the areas in PF-4 that could be made available and pair that capability for "heavy lab" activities with the "light lab" capabilities of the already built CMRR-LUOB.

Moreover, there is no demonstrated "need" for LANL to increase its plutonium pit production capability from 20 pits/year to the proposed 50-80 pits/year (or above). We note in this regard that after demonstrating a diamond stamp pit production capability at LANL, about 11 pits were produced - and then in subsequent years pit production has hovered around single digits, according to the numbers that we have been given. (Tri-Valley CAREs does not believe that even 20 pits/year pits are needed, but, in any event, the agency's perceived "need" can be met by 20 pits/year.)

Thus, the reasonable alternative analyzing the integrated potential capabilities of PF-4 (in the 2020 time frame) and the CMRR-LUOB, must be considered also in the context of continuing at the current rate of 20 pits/year at LANL, which has been the limit since 1999.

The DOE NNSA must also consider as reasonable that significant progress on U.S. and global nuclear disarmament is possible before 2020. This speaks to "purpose and need" of the CMRR-NF as well as its "alternatives." Without such a consideration, billions of tax-payer dollars may be spent on a facility that stymies rather than enhances the opportunities to move forward toward a more safe and sustainable world, free of nuclear weapons.

2. The NEPA Process Must Not be Prejudiced or Predetermined, or it is Rendered Legally Deficient.

According to NEPA, an EIS must serve as the means of assessing the impacts of a proposed action and alternatives before a commitment to a particular action is made by the lead agency. The EIS must not be a justification of decisions that were made prior to completion of the NEPA analysis. 40 C.F.R. 1502.2(g).

DOE NNSA must not prejudice the selection of the proposed action by committing resources prior to the NEPA decision. Whether a draft EIS or Supplemental EIS is prepared, the standard regarding predetermination of outcome by an agency is the same. It is forbidden.

DOE NNSA has taken actions to accelerate construction of the CMRR-NF. It combined two project management stages under DOE Order 413.3A of "Approve performance baseline" and "approve start of construction" to expedite the start of construction. It has also come to light that the DOE NNSA divided the project into packages so that construction on some parts could go forward, even if the baseline had not been established for other parts. Additionally, we understand that DOE NNSA has already determined what the footprint of the facility should be and that all future design and construction must conform to those specifications.

Additionally, top DOE NNSA officials have been quoted by reputable reporters as stating that the CMRR-NF is essential to agency plans and that the agency is "committed" to completing the CMRR-NF as currently envisioned. How is this not predetermination? The draft EIS or Supplemental EIS must, given the circumstances, go the extra mile in detailing how and why the agency has not predetermined the outcome of the NEPA review before its completion. Moreover, we note that the proof of this must extend beyond mere assertion and be carried through in the analysis of "purpose and need", "alternatives" (and other sections) and be demonstrated in the final decision.

3. Cleanup of the Existing Contamination and Waste Management Issues Must Be the Priority at LANL – Not a New CMRR-Nuclear Facility.

A legal obligation was undertaken to clean up the legacy waste sites at LANL when the parent agency signed the Consent Order with the New Mexico Environment Department on March 1, 2005.

The Order requires cleanup of certain sites by December 31, 2015, including the Area G dump site at Technical Area 54. Construction activities for a new CMRR-NF will interfere with cleanup activities, including those at the nearby Material Disposal Area C. DOE NNSA must make compliance with the Order the priority – and demonstrate how it will achieve that priority in the draft NEPA review.

In this regard, and as alluded to in our alternatives comment, the "opportunity" cost of building the CMRR-NF on the unmet cleanup and waste management needs at LANL must be carefully examined.

4. A Thorough Analysis of the Expected Costs of the Facility Must be Included.

Since the initial EIS, the estimated costs to build this facility have skyrocketed. The total original estimate for the CMRR Project, including the recently completed \$363 million Radiological Laboratory Utility and Office Building, was around \$600 million in 2004. The current estimate is \$4.5 billion. The estimate, we are told, may continue to climb.

This huge growth in cost is largely due to the fact that the site is in a geologically unstable area. LANL is located between a rift valley (Rio Grande in that area) and a volcanic range (Jemez Mountains) in a seismic fault zone (the Pajarito Plateau).

An updated seismic hazards analysis was published in May 2007. It showed a potential increase in seismic ground motion and activity. What percentage of the more than \$3 billion in recent cost estimate increases are due to efforts to address the increased seismic hazards? DOE NNSA must analyze whether an additional \$3 billion in estimated costs is too high a premium to pay for a new NF. In order to address these increased seismic hazards, DOE NNSA now plans to excavate 225,000 cubic yards of earth under the proposed NF and fill the hole with concrete. DOE NNSA must also address the following: Is the surrounding geology robust enough to support all that concrete? Could a seismic event cause the “slab” to sink or shift? In trying to solve one problem, is another being created?

5. Environmental Justice – Both Economic and Ethnicity Analyses Must Be Done.

Los Alamos County is one of the richest counties in the U.S. It is surrounded by some of the poorest and most ethnically diverse counties in the country. Therefore, shipping any type of waste to anywhere else is an inherent environmental justice issue. We support our NM colleagues' demand that this analysis must be done in the new draft EIS or draft supplemental EIS.

6. Health Effects for Those Most at Risk.

Many federal standards for protection of human health, such as limits on emissions from the proposed CMRR-NF industrial stacks, are based on "Reference Man," a hypothetical Caucasian male 20 to 30 years old weighing 154 pounds. All analyses must address the risk to a pregnant woman farmer, her fetus, and her other children under age 18, rather than Reference Man. As a matter of reproductive and environmental justice, the most potentially vulnerable human beings must be protected. As a matter of racial justice, indigenous peoples' (i.e., first Nation) culture and diet must also be considered in determining vulnerability and risk.

7. Waste Disposal - To Use DOE Terminology, "What is the “Path Forward?”

Given the anticipated lack of disposal facilities for low-level radioactive, toxic, and hazardous waste

at LANL, DOE NNSA must detail where its legacy and newly generated waste will be disposed and how it will be transported to off-site facilities. DOE NNSA must analyze the proposed transportation modes and routes and the impacts to the communities along the routes and those surrounding the dumps. What emergency preparedness capabilities exist along the proposed routes?

8. Water Usage in the Face of Stricter Limits Asked by DOE.

The agency estimated in its 2003 Final CMRR EIS that waste generation may double and the annual water consumption may increase by 10.4 million gallons. Why should a Leadership in Energy and Environmental Design (LEED) certified building generate waste, emit contaminants into the air, and/or discharge contaminated water into the canyons? DOE NNSA must explain these contradictions.

9. Climate Change Impacts Analysis Must be Included

On February 18, 2010, the Council on Environmental Quality (CEQ) released draft guidance for public comment about how “Federal agencies can improve their consideration of the effects of greenhouse gas GHG emissions and climate change in their evaluation of proposals for Federal actions under the NEPA.” While the guidance is being finalized, the CEQ recommends “just-doing-it.” DOE must conduct such analyses in the new draft EIS or draft Supplemental EIS.

10. Methods for Decontamination, Decommissioning and Demolition (DD&D) of the Existing CMR Building and the Proposed New NF.

The 2004 Record of Decision (ROD) for the CMRR Project stated the existing CMR building would be DD&D in its entirety. However, the actual implementation of these decisions is dependent on DOE funding levels and allocations of the agency budget across competing priorities, including construction of a new NF. The DD&D Work Plan must be part of the new draft EIS in order to ensure that it becomes part of the complete National Environmental Policy Act analyses.

Further, the new draft EIS or supplemental EIS that will analyze the impacts of building a new CMRR-NF must also examine the impacts of removing it.

11. The Impacts of the CMRR-NF (and the Pit Production Increase it will Enable) on Nuclear Proliferation and U.S. Treaty Obligations Must be Examined.

First, a non-proliferation analysis must be part of the draft NEPA review document, be it an EIS or Supplemental EIS. The analysis must examine (a) the project's potential deleterious impact on U.S. image abroad and on the country's nonproliferation goals, (b) the project's potential impact on other nuclear weapons states' decisions to commit to new nuclear arms control and disarmament measures - and on non-nuclear weapon states' willingness to so remain in the face of increased U.S. plutonium pit production in general and the CMRR-NF's role in particular, and (c) the potential impact of other nations' unfavorable response(s) on the U.S.

Equally, DOE NNSA must consider how the agency will ensure compliance with the spirit and letter of the Non-Proliferation Treaty (NPT). As a signed, international treaty obligation, the NPT is, according to Article 6 of the U.S. Constitution, the supreme law of the land (along with the Constitution itself).

The signatory non-nuclear weapons states parties to the NPT have long decried any nuclear weapon state's "modernization" of its arsenal. The New Agenda Coalition stated, "Any plans or intentions to develop new types of nuclear weapons or rationalization for their use stand in marked contradiction to the NPT, and undermine the international community's efforts towards improving the security of all states." Hans Blix stated that "any state contemplating replacement or modernization of its nuclear weapons systems must consider such action in the light of all relevant treaty obligations and its duty to contribute to the disarmament process." The previous UN Secretary-General Kofi Anan spoke out against modernizing nuclear arsenals or delivery systems. The current Secretary-General, Ban Ki-moon, spoke eloquently on this topic at the NPT Review Conference in May 2010. And, in their submittal to the NPT Review Conference this year, the Non-Aligned Movement's statement opposed modernization programs by nuclear weapons states.

These are only a few examples of how NPT states parties and UN officials at the highest levels have interpreted the obligations of nuclear weapons states under the NPT's Article VI disarmament clause to forego the exact types of activities that the CMRR-NF would enable. This contradiction, and its potential negative consequences, must be fully considered in the draft EIS or draft supplemental EIS for the CMRR-NF.

12. A Thorough Analysis of Security and Terrorism Risks Must be Undertaken, and an Unclassified Summary Must be Included in the New, Draft NEPA Document.

The analysis must include "outside" and "insider" threats, and their potential adverse impacts on workers and the surrounding community. Some reasonable scenarios include, but are not limited to, airplane crash, platter charge or other attack at a critical point (which may not be the CMRR-NF itself, but, rather, a more vulnerable point in the related plutonium, waste or transport processes), access to material by unauthorized persons with knowledge of radiological device construction, material theft, discharged employee(s) whose badge(s) was not turned in (all too common), disgruntled or depressed employee(s), etc.

While details about how to gain access (for example) may be classified appropriately, it is neither necessary nor appropriate to classify all substantive aspects of the analysis. In particular, the environmental and health impacts to other workers and the public must not be classified.

13. Request for Background Documents to be Posted on the Web and Made Available in NM Repositories.

DOE NNSA has undertaken the step to place background documents on the web, which goes beyond the minimum NEPA requirement, in the past, and Tri-Valley CAREs has availed itself of the source documents when they have been made accessible. We request that this be done for the CMRR-NF NEPA review. We believe this step will enhance the quality of comments the agency will receive from the public.

Thank you for your consideration of our comments on the type of NEPA review required (full EIS with new "purpose and need" section) and on the scope of the pending NEPA review for CMRR-NF.

Sincerely,

Scott Yundt,
Staff Attorney

Marylia Kelley,
Executive Director