

# MONITOR

## NUCLEAR WEAPONS & MATERIALS

U.S. National Nuclear Security Administration ♦ Russian Ministry of Atomic Energy  
...*plus* International Nonproliferation Initiatives (*State, DoD, G-8, IAEA*) ♦ Uranium Enrichment

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### LOS ALAMOS STUDY GROUP FILES SUIT OVER LANL PLUTONIUM FACILITY

The National Nuclear Security Administration has relied on inadequate environmental reviews of the Chemistry and Metallurgy Research Replacement project and the multibillion-dollar effort should be halted, according to a lawsuit filed in federal court in New Mexico earlier this month by the Los Alamos Study Group. The suit, filed Aug. 16, alleges that the 2003 Environmental Impact Statement performed on the project describes a facility that is significantly different than the one now proposed, and that material conditions have changed in a way that necessitates the additional discussion of alternatives—a requirement under the National Environmental Policy Act (NEPA).

The potential effects of the suit are unclear. In the past, successful NEPA litigation has forced new environmental reviews that have led to delays of a year or more on Department of Energy nuclear projects. Even unsuccessful lawsuits, like the case brought against DOE involving plans to build a new Kansas City Plant for the NNSA, have resulted in long delays. In the case involving the Kansas other environmental groups sued the NNSA to conduct a more stringent environmental review of the NNSA's move to a new facility, helping delay the start of construction by nearly two years.

#### 'The Time for Cozy Internal Review Has Passed'

Los Alamos National Laboratory and National Nuclear Security Administration officials have previously responded to criticisms of their reliance on old NEPA studies by pointing to an ongoing review to determine whether additional NEPA analysis is needed. But Greg Mello, the Study Group's director, called the current effort inadequate. "The time for cozy internal review has [passed]," Study Group director Greg Mello said. "Everyone knows the project's costs, challenges, and impacts have exploded, and many parties, including NNSA and congressional committees, are starting to worry that the project has gotten too big, too expensive, and too risky."

NNSA's response to the lawsuit was limited to a written statement: "NNSA does not comment on pending litigation. The agency has initiated the process of preparing a supplement analysis for the proposed Chemistry and Metallurgy Research Replacement Nuclear Facility. Pursuant to federal regulation, NNSA prepares a supplement analysis to determine whether an existing environmental impact statement should be supplemented, a new environmental impact statement should be prepared or no new NEPA documentation is required. NNSA takes its commitment to environmental stewardship and the state of New Mexico very seriously."

Mello's legal brief appears simultaneously targeted at technical legal questions surrounding NEPA, and also at some of the project's soft political underbelly, as concerns about rising federal deficits raise questions about the long term fiscal viability of the multi-billion dollar project. While the NNSA hasn't settled on a firm cost

estimate for the project and won't for several more years, budget documents indicate that the facility could cost more than \$4 billion to build. It is planned to replace Los Alamos' 1950s-era Chemistry and Metallurgy Research facility, relocating and consolidating analytical chemistry, material characterization and actinide research and development work at the lab in support of the agency's plutonium research and pit surveillance activities.

### **Suit Alleges Significant Increase in Facility's Size**

On NEPA grounds, the Study Group and its attorneys argue that the 2003 review, which was later incorporated by reference in subsequent NNSA NEPA reviews of the lab and the broader nuclear complex, was "for a much simpler and less environmentally impactful nuclear facility concept." The suit notes that the size of the facility, which has been significantly modified in response to new data regarding seismic risk, has grown substantially since 2003: from a small aboveground facility to one that is mostly built underground and is 44 percent bigger than previously planned. "The underground behemoth NNSA now proposes to build bears little resemblance to the light, above-ground structure proposed in 2003," Mello said. "Any 'supplemental' analysis of the existing plan falls far short of what the law requires and what all parties—especially NNSA—badly need."

The suit also charges that the alternatives studies in 2003 are inadequate, in particular because of the facility's rising cost. "In the several years that have passed since defendants vetted project alternatives prior to the now-antiquated NEPA analysis, projected unit costs per useful square foot have risen even farther and faster than projected overall Nuclear Facility costs, thereby widening the potential range of reasonable alternatives to the proposed Nuclear Facility," the suit alleges.

### **Suit Targets Minor, Major Issues**

Among the effects the Study Group alleges have not been properly analyzed are the seemingly mundane issues like the acreage needed for the project's construction yard and the tremendous volume of concrete planned for the project. And the suit also takes aim at some underlying problems with the project that appear to bear little connection to NEPA, but for which the lawsuit provides a tool for placing criticisms into the public record. For example, the lawsuit quotes LANL Director Michael Anastasio's July 15 Congressional testimony in which he expressed concerns about funding for the project given other competing future fiscal demands: "I fear that some may perceive that the FY11 budget request meets all of the necessary budget commitments for the program; however, there are still significant financial uncertainties, for example, the design of the UPF [the proposed Uranium Processing Facility in Tennessee] and CMRR are not complete and the final costs remain uncertain. As I look to the future, I remain concerned that science will be squeezed when trying to compete with capital infrastructure investments and life extension program funding priorities."

The Study Group also quotes former Lawrence Livermore Director Johnny Foster, who in July 20 Congressional testimony also raised questions about the coming financial squeeze related to CMRR, UPF and other needed weapons work: "At present we do not yet have good cost estimates for the new facilities, each of which are expected to cost billions of dollars. There is general concern that their costs will exceed the preliminary estimates and that may force major reductions in other NNSA nuclear weapons activities to include warhead surveillance, the life extensions and science programs."

*—From staff reports*