

*Comments of the Oak Ridge Environmental Peace Alliance
on the
Final Complex Transformation Supplemental Programmatic Environmental Impact Statement*

November 20, 2008

The Final Complex Transformation Supplemental Programmatic Environmental Impact Statement is a disappointment to tens of thousands of people who commented on the Draft C-Trans SPEIS, not simply because the Final C-Trans SPEIS indicates a preferred alternative different from the one they advocated, but because they will find, in Volume 3, Part 2, that many of the concerns they raised are dismissed in ways that range from disingenuous to dishonest.

The C-Trans SPEIS is a massive document, complex and often confusing. Tracking down comments and responses and then the documentation on which the comment is based is laborious and time consuming; the idea that the public is supposed to digest the Final SPEIS and lodge any concerns, comments or complaints in 30 days is untenable. So these comments are provided with the disclaimer that they do not exhaust our concerns with the Complex Transformation SPEIS and the hope that they at least give the NNSA pause to consider a more meaningful exchange on the continuing concerns with the Preferred Alternative and the inadequacies of the responses provided to many comments submitted by people across the country.

Specific comments:

Volume 3 of the Final C-Trans SPEIS makes clear that the goal of the National Nuclear Security Administration was not to give serious and thoughtful consideration to the comments of the public with an aim toward incorporating them into the decision-making process, but rather to protect at all costs a predetermined decision and to formulate a "response to comments" document that would meet the minimum standards required by law for consideration of public comments.

For instance:

Comment 1.A deals with the World Court's 1996 decision on the legality of the use or threat of use of nuclear weapons. (p.3-3) In responding to the public's assertion that Complex Transformation plans would violate the court's ruling, the NNSA cherry picks the World Court opinion, glossing over the central finding of the court, and then asserts: "Accordingly, the NNSA believes that transformation plans do not violate the Advisory Opinion." But the finding cited in the SPEIS is not the only finding of the court's opinion. Of equal weight are these finding of the court:

"It follows...that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." and "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." This last was a unanimous decision of the court and it echoes the words of the Article 6 of the Nuclear Nonproliferation Treaty.

The inarguable truth is this. The United States of America, in 1968, signed the Nonproliferation Treaty promising the world it would pursue in good faith negotiations leading to disarmament at an early date; in 1996 the International Court of Justice affirmed that commitment and opined that the intent of Article 6 was not just to pursue but to achieve disarmament.

On this commitment hinges the efforts of the United States and the entire world to prevent the proliferation of nuclear weapons.

If the NNSA wants to make an argument that Complex Transformation – the rebuilding of the nuclear weapons production complex in the United States – somehow conforms with the commitment made by the United States nearly 40 years ago to pursue in good faith disarmament at an early date, that argument should be made, and it should be made in response to comment 1.A.

To simply assert that NNSA believes “transformation plans do not violate the advisory opinion” when the ruling of the court contains clear language which can not be twisted to conform to the idea of ongoing production of nuclear weapons, is at best willful ignorance; at worst, dishonest; and in any event, inadequate as a response to a serious comment.

In the response to **Comment 1.C**, the NNSA argues that it does not base its statement of need on the Nuclear Posture Review, but on Presidential Decision Directives, Nuclear Weapons Stockpile Plans, and the judgment of NNSA in consultation with DoD and experts at NNSA national laboratories. In other words, there is no firm stockpile capacity requirement that compels complex transformation – the decision on the future configuration of the weapons complex, or even whether we continue to maintain a weapons complex or not, is the result of a calculation that includes some hard source numbers, presumably, from the PPD and the NWSP, and some soft numbers derived from conversations within the weapons establishment. These soft numbers are apparently arrived at by a combination of considered judgment and experience and a hard stare into a crystal ball. (The Final SPEIS does not mention the crystal ball, but it is implied.)

Commenters on the Draft questioned the timing of the SPEIS, especially the accelerated schedule. The haste with which the Draft SPEIS was transformed into a Final document lends credence to these concerns. But since the Draft SPEIS was published, the world has continued to spin, and events have significantly altered the landscape in which this document is being rushed to decision as well as the terrain on which it is built.

A bipartisan commission has been appointed by Congress to prepare an assessment of future US nuclear weapons needs; the Gang of Four (Kissinger, Shultz, Perry and Nunn, along with countless other high level military, diplomatic and security experts from across the globe) have continued to press for concrete steps to be taken toward disarmament; the United States has elected a president whose primary platform was change, and included as a keystone of that change is a new US engagement with the world; Russia is no longer threatening to revive military programs in response to perceived US military threats, it is doing it; and key Congressional leaders like Rep. Ellen Tauscher are calling for a national conversation on nuclear weapons plans.

The reality, no matter what the NNSA asserts in its document, is that the future of nuclear weapons production in the United States will be the result of a broader conversation than indicated in the SPEIS, a conversation which is already happening.

That is why no credible argument can be made for issuing a Record of Decision at this time; there is no urgency except the expiration of the term of office of the current president and the terms of a number of members of Congress. The SPEIS is not designed to be a political document, but it often is. And insofar as that is true, in this case especially, the decision to rebuild the US nuclear weapons design and production complex is far too important to be rushed to a Record of Decision. This is, contrary to the assertion in the Response to Comments, a “reason to delay” not only some but all of the decisions contemplated in the SPEIS. Unless the NNSA is prepared to assert that the US nuclear weapons stockpile is not at this time safe, secure and reliable, there is no urgent need for an accelerated Record of Decision.

In its response to **Comment 7.0** (and also **7.O**), apparently a collection of many comments referencing a No Production Alternative which envisions a weapons complex dedicated to the safe and secure dismantlement of nuclear weapons and disposition of materials and components,

NNSA dismisses the No Production Alternative because “it would not meet NNSA’s purpose and need for action.” In its place, NNSA examines a creature of its own creation, the “No Net Production/Capability-Based Alternative.”

For the record, as one of those who proposed that NNSA must evaluate a No Production Alternative as a reasonable alternative, I object to the substitution of a “No Net Production/Capability-Based Alternative” for a true No Production Alternative. The two are dramatically different in spirit and in effect. The evaluation of a NNP/C-B Alternative, while it may be appropriate in the SPEIS and may meet a need identified internally by NNSA, is not an evaluation of a No Production Alternative.

Furthermore, the dismissal of the No Production Alternative because it would “not meet NNSA’s purpose and need for action,” or “enable NNSA to meet its statutory mission” is inappropriate for three reasons:

1. NNSA’s purpose and need is flexible; dependent, according to the response to Comment on a variety of inputs. There is no fixed “number-of-warheads-required-in-2020” or 2040 or 2055 (nearing the endpoint of the design-life of the proposed transformed complex) that compels the NNSA to maintain a massive weapons production infrastructure, production capacity in 2055 depends entirely on factors which are currently unknowable and unforeseeable – by 2055 we may be using nuclear weapons to extort clean drinking water from countries which have more that we do or we may be living in world where NPT commitments were honored and nuclear weapons are remembered as an artifact of the WMD generation. The point is consideration of a weapons complex in 2040 that produces no nuclear weapons is just as reasonable as a complex that projects the future as a slightly diminished reflection of the present.

The crux of the matter is the reasonableness of the alternative. Nuclear weapons, and the threat they pose to the planet, are a generation old. When nuclear weapons were first developed, it would have been inconceivable to the men and women who designed them that they would one day live in a world where Germany and Japan were strong US allies, or that an African American would be entering the White House to serve as President of the United States.

Those of us who continue to insist that a No Production Alternative posits a reasonable future are right; the Final C-Trans SPEIS should give full consideration to a No Production Alternative and assess its environmental impacts relative to the alternatives NNSA prefers to evaluate.

2. The purpose of an Environmental Impact Statement is to fully evaluate all reasonable alternatives, not only those that enable NNSA to meet its current statutory obligations (which themselves allow for considerable interpretation). Ten years ago, NNSA did not exist. In a document that proposes to make a plan for the next 35-40 years, it is obvious that the statutory obligations of the NNSA are likely to change (especially if the US meets its obligations under the Nonproliferation Treaty) and, within those obligations, priorities are likely to shift (from production to dismantlement, for instance). So it is reasonable, NNSA assertions about its statutory obligations aside, to consider a scenario in which our weapons complex does not produce nuclear weapons – the No Production Alternative. It is not reasonable to dismiss the alternative as unthinkable; the world and its future are bigger than the statutory obligations of the NNSA.

3. Legally under our Constitution, and ultimately, given the sweep of history, the obligations of the United States of America under the Nuclear Nonproliferation Treaty trump the statutory obligations of the NNSA. Despite the importance of its national security mission, the NNSA does not stand outside the Constitution and is subject to the obligations placed upon it by that document.

Comments not responded to:

Many comments submitted by the Oak Ridge Environmental Peace Alliance were not responded to in any substantive or meaningful way in the C-Trans SPEIS. For instance, the comment that

NEPA requires cradle-to-grave consideration of environmental impacts of proposed actions (7.M.1) was answered with a reiteration of the mission statement of the NNSA, a complete *non sequitur* which fails to address, even obliquely, the comment.

Comment 11.0 A comment stating NNSA needs to evaluate the full life cycle of contaminants resulting from its operations at Y12 (Uranium, for instance, has a radiological half-life exceeding 700,000,000 years and a biological half-life in excess of 7 billion years) was dismissed by the assertion that the NNSA has evaluated environmental impacts for construction and operation (60 years or so) of the proposed facilities in a transformed complex. This leaves only 6,999,999,930 years of uranium's hazard-life unaccounted for; at that point whoever is still around will have to figure out how to deal with a huge pile of toxic lead, the end of the decay chain for uranium.

Specific comments regarding environmental impacts of operations at Y12 in Oak Ridge are not addressed in the C-Trans SPEIS save for generic references to documents, charts and tables which confirm the comments – Y12 continues to release contaminants in its daily operations which impact aquatic and other life. In addition, **section 4.9** and its subparagraphs document unmonitored air releases from Y12 and surface water contamination on-site and off-site. There are tables showing the presence of endangered and threatened species on the Oak Ridge Reservation but no mention of contamination of other species of wildlife, though such contamination is well documented by DOE. The section of environmental justice diminishes the gross injustice of subjecting the Scarboro community to releases from the Oak Ridge Reservation by combining them with all residents living within 50 miles of the plant. This may be legal and permissible, but it is immoral and violates the spirit of the Executive Order establishing environmental justice as a factor to be considered. The truth is within a five-mile radius of the Y12 Plant (the area most likely to be subject to impacts from contamination resulting from construction and operation of the preferred alternative) the Scarboro community is predominantly African-American and low income and is disproportionately impacted, historically and currently, by the pollutants released on the Oak Ridge Reservation.

Not that this matters, apparently. In presenting its preferred alternative, there is no indication that DOE took into consideration any of the environmental factors – they are documented in the SPEIS, but there is no indication that they were influential factors in the NNSA decision-making process.

For the record:

The table on page **3-163** states that “there is a moderate seismic risk at Y12.” Independent studies of seismology in East Tennessee (a report prepared by the University of Chapel Hill in North Carolina in 1994) and DOE's own Safety Survey (circa 1993) acknowledge seismic activity along the New Madrid fault to be the second highest in the United States. The Chapel Hill study found that frequent low-level activity should be considered an indicator of likely high-level activity in the future.

On page **3-152**, in the Preferred Alternative, the SPEIS states that under this alternative a Uranium Processing Facility (UPF) will be built at Y12 and that site-specific impacts and candidate locations for a new UPF will be analyzed in the Y12 Site Wide EIS. This directly contradicts assurances made by Ted Wyka to Ralph Hutchison that the Complex Transformation SPEIS would not prejudice decisions related to the location of the UPF at Y12, including the decision of whether or not to build the UPF in Oak Ridge. This discussion occurred as DOE tried to sort out the timing of its concurrent EIS processes. Initially, we were told (in response to our questions) that the Y12 SWEIS would precede the Complex 2030 SPEIS and that the C-2030 SPEIS would be “informed” by the Y12 Site Wide.

When the dates for release of the Draft EISes suddenly appeared to switch on DOE's NEPA website, we requested clarification of the change and the rationale for decision-making. Our key concern was that the decision to site a facility in Oak Ridge could be made in the Complex Transformation SPEIS before the detailed evaluation of the environmental impacts of a proposed facility could determine whether or not the environment, especially considering 65 years of contamination, could sustain or support such a facility. Mr. Wyka assured me on the phone and in writing that the Complex Transformation SPEIS would not prejudice a siting decision in Oak Ridge. But the language in the description of the preferred alternative is precisely what we feared – that regardless of the environmental issues that arise as a result of the Y12 Site-wide EIS, NNSA will say, "We'll, we're going to build it here; that decision was already made in the Complex Transformation SPEIS."

Our question remains: given the cursory evaluation of environmental impacts in the Complex Transformation SPEIS, how can NNSA make a determination that the UPF will be built in Oak Ridge without completing a thorough environmental assessment of the site?

The Oak Ridge Environmental Peace Alliance strongly urges the Department of Energy/NNSA to honor the commitment made to us and to refrain from making a site-determinative decision on the UPF until the Y12 Site-wide EIS is completed.

submitted on 20 November 2009 by e-mail
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