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## **In Response to Lawsuit, NNSA Releases FY 2022 Performance Evaluation Reports as “Frequently Requested Documents” as Required by FOIA; Reveals Pit Production Schedule is Likely Increasingly Delayed**

*Santa Fe, NM* – Today, the National Nuclear Security Administration<sup>1</sup> (NNSA) finally posted its FY 2022 Performance Evaluation Reports to its electronic “FOIA Reading Room.” These reports are “Frequently Requested Documents” as defined by the Freedom of Information Act (meaning three or more requests) and are therefore required to be posted under the law. The catalyst for this was a lawsuit filed by Nuclear Watch New Mexico in September 2022.

NNSA’s Performance Evaluation Reports for its eight nuclear weapons research and production sites<sup>2</sup> grade annual contractor performance and award performance fees accordingly. Approximately 57,000 people are employed by the NNSA nuclear weapons complex, 95% of them contractor personnel. The Department of Energy and NNSA (or its predecessor DOE Defense Programs) have been on the independent Government Accountability Office’s “High Risk List” for project mismanagement and waste of taxpayers’ dollars since 1992.

NNSA sought to hide how taxpayers’ money is spent from the public, releasing only terse three page summaries instead of the full and complete Reports. Nuclear Watch sued in 2012 to obtain the Performance Evaluation Reports, after which NNSA started releasing them within three working days. But NNSA began again releasing only summaries in 2019, despite a Freedom of Information Act request by Nuclear Watch that the agency never responded to. Moreover, NNSA never posted the reports to its electronic FOIA Reading Room as required for Frequently Requested Documents. With these postings today Nuclear Watch’s lawsuit has established good legal precedent for compelling agencies to post Frequently Requested Documents all across the federal government.

As the well regarded New Mexico federal judge Bruce Black ruled in an earlier FOIA lawsuit filed by Nuclear Watch New Mexico,

“The purpose of FOIA is to allow citizens to learn what their government is doing and how it is being done... A bona fide request for production of documents under FOIA must be honored in a timely fashion or the purpose of the Act is vitiated... Congress amended FOIA specifically to address “substantial ‘foot-dragging’ on the part of administrative officials who invoked every conceivable delaying technique and forced citizens requesting information under the FOIA to resort to expensive litigation for vindication of their rights... Information is often useful only if it is timely. Thus, excessive delay by the agency in its response is often tantamount to denial... FOIA is intended to ensure the prompt disclosure of information, not its suppression.”

In all, NNSA gave an overall rating of “Very Good” to Triad National Security, LLC, the contractor running the Los Alamos National Laboratory (LANL). But to illustrate the importance of these

Performance Evaluation Reports, the NNSA Report also noted various negative issues related to plutonium pit production, an expanding mission that the Pentagon has called the number one issue in the planned \$2 trillion “modernization” of U.S. nuclear forces. Pit production at LANL, and more specifically whether the Lab will safely meet its scheduled “First Production Unit” (FPU) in 2024, has been of intense congressional and public interest.

Some relevant excerpts from the FY 2022 LANL Performance Evaluation Report are:

“... inconsistent rigor in implementing Integrated Safety Management resulted in specific incidents to safe facility operations in several programmatic areas, which impacted worker safety.”

“Triad has not instilled a culture of consistent production... Integration and cross organizational management that supports production operations, safety, and security is lacking and impacting production activities. For example,” [redacted]

“Insufficient planning impacted production equipment operability and availability to support pit production FPU efforts” [next three sentences redacted]

“Triad did not augment resources and improve resource utilization to effectively integrate production and equipment installations to ensure progress toward meeting FPU and full rate production [of least 30 pits per year by 2030]. Several plutonium modernization equipment installation projects are behind the baseline schedule. Improved integration and focus on recovering schedule are underway to ensure continued progress toward the FPU and rate production.”

“Triad began efforts to develop an integrated schedule for plutonium facility operations. The scope of work that can be accomplished within the facility does not consistently and broadly exist. Analysis does not currently account for transportation, shipping, personnel access, measurement and flow.” [next three sentences redacted.]

As a policy issue, expanded plutonium pit production is not only not necessary but may actually degrade national security. This is because no future production is scheduled to maintain the safety and reliability of the existing, already extensively tested nuclear weapons stockpile. Instead, future production is for speculative new-design nuclear weapons that can’t be tested because of the international testing moratorium. Or, arguably worse yet, may prompt the U.S. to resume testing, which would have severe international proliferation consequences.

Obviously, it is imperative that Congress and the public have the full and complete picture of the progress (or not) of expanded plutonium pit production at the Los Alamos Lab and planned redundant production at the Savannah River Site, which together is expected to cost at least \$60 billion over the next 30 years. In its lawsuit, Nuclear Watch asked the court to require that NNSA automatically post future Performance Evaluation Reports in its E-FOIA Reading Room, as the law requires for “Frequently Requested Documents.”

Nuclear Watch New Mexico is represented by the attorneys Jules Zacher of Philadelphia, PA and John Stroud of Santa Fe, NM. In having to again file litigation for NNSA’s annual Performance Evaluation Reports, Mr. Zacher commented, “As the inestimable Yogi Berra said, “It’s deja vu all

over again,” but in this case it involves the existential consequences of misguided nuclear weapons policies.”

Jay Coghlan, director of Nuclear Watch New Mexico, added, “NNSA is becoming more opaque and less transparent in its head long rush toward expanded plutonium pit bomb core production. It’s crucial that citizens have full and complete information on how their taxpayer dollars are being spent as the world enters a new and more dangerous nuclear arms race. Our lawsuit is successfully enforcing greater transparency and accountability.”

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NNSA’s FY 2022 Performance Evaluation Reports are available as “Frequently Requested Documents” at <https://www.energy.gov/nnsa/fee-determination-letters-and-performance-evaluation-reports-2>

Nuclear Watch’s October 2022 Amended Complaint demanding that NNSA post its annual Performance Evaluation Report as “Frequently Requested Documents” in its electronic FOIA Reading Room is available at <https://nukewatch.org/first-amended-complaint-10-15-22/>

This press release is available at <https://nukewatch.org/press-release-item/nnsa-fy-2022-pers/>

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<sup>1</sup> The National Nuclear Security Administration (NNSA) is the semi-autonomous nuclear weapons agency within the Department of Energy.

<sup>2</sup> The eight NNSA sites are the Los Alamos, Sandia and Lawrence Livermore National Laboratories; the Savannah River, Kansas City, Y-12 and Pantex production plants (the last two are contractually combined); and the Nevada National Security Site.