

Doc#2017-100-036, 2016 DRAFT Annual Report to Congress YELLOW FOLDER AMENDMENT BY Vice Chairman Hamilton

Amend page EX-1, second paragraph, first sentence by deleting the words, "... and workers"

Justification

The Board's enabling statute, 42 U.S.C. § 2286 specifies that the Board's mission is to provide, "... adequate protection of public health and safety" The statute specifies only the public, not workers. Historical perspective shows that protection of nuclear workers has been part and parcel of ensuring "adequate protection" under the Atomic Energy Act since the earliest days of the nuclear industry, and [REDACTED]

[REDACTED] The extent to which workers are protected relative to the general population has varied, however, in view of the assumption that they had accepted the existence of some degree of hazard when they took the jobs. If Congress intended to exclude workers as a subset of the public, then it is not appropriate for the Board to add them, and if Congress did consider workers as a subset of the public, then it is not necessary to call them out as an additional category. The optimal path, therefore, is to reflect the exact language of the Board's enabling statute.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Amendment by Board Member Daniel J. Santos to YELLOW FOLDER Doc#2017-100-036, 2016 Draft Annual Report to Congress

Doc Control#2017-100-036A

The Board, with Board Member(s) Sean Sullivan, Jessie H. Roberson, Daniel J. Santos *approving*, Board Member(s) Joyce L. Connery *disapproving*, Board Member(s) Bruce Hamilton *abstaining*, and Board Member(s) none *recusing*, have voted to disapprove the above document on April 17, 2017.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/14/17
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/14/17
Jessie H. Roberson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	04/14/17
Daniel J. Santos	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/14/17
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/17/17

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress


Doc Control#2017-100-036A

Approved X Disapproved _____ Abstain _____
Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

The DNFSB enabling statute refers to “adequate protection of the public health and safety,” which has been historically interpreted to include consideration of the health and safety of both the general public outside a DNF site boundary and the workers within that boundary. Department of Energy regulations establish requirements for DOE and its contractors to demonstrate through a documented safety analysis that protection is adequate. DOE regulations establish separate DSA thresholds for the public and the workers. Thus, “public” as used by Congress means both the general public and the workers, while “public” as used in DOE regulations means only the general public.

The amendment proposes to change the executive summary to the Board’s annual report to Congress such that it refers to the “public” with the meaning given that term in the statute. When speaking to Congress, the Board should speak in the language that Congress used. Accordingly, I approve the amendment.



Sean Sullivan
4/14/17

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress

Doc Control#2017-100-036A

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

This Amendment removes the words, "... and workers ..." from page EX-1, second paragraph, first sentence. The Board's enabling statute, 42 U.S.C. § 2286 specifically states that the Board's mission is to provide, "... adequate protection of public health and safety" The statute mentions only the public, not workers. Historical perspective shows that protection of nuclear workers has been part and parcel of ensuring "adequate protection" under the Atomic Energy Act since the earliest days of the nuclear industry, and [REDACTED]

[REDACTED] The extent to which workers are protected relative to the general population has varied, however, in view of the assumption that they had accepted the existence of some degree of hazard when they took the jobs. The definition of what constitutes "the public," therefore, has some room for subjective interpretation. If Congress intended to exclude workers as a subset of the public, then it is not appropriate for the Board to add them, and if Congress considered workers as a subset of the public, then it is not necessary to call them out as an additional category. The optimal path, consequently, is to quote the exact language of the Board's enabling statute.



Bruce Hamilton

14 APR 2017

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress

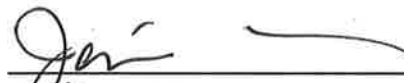
Doc Control#2017-100-036A

Approved _____ Disapproved _____ Abstain _____

Recusal – Not Participating X

COMMENTS: Below X Attached _____ None _____

There has been no actual policy or decision made by the Board on this matter. It is clear there has been a long standing practice to incorporate worker safety in dnfsb public reports and historically the Board has actually issued Recommendations on issues that fell squarely in the worker safety space. It is also true that the then General Counsel (in 2013) wrote an opinion on this matter that some Board Members formally challenged as crossing into policy space, which is the purview of the Board. Efforts were undertaken in 2014 to further refine the writing. However, there is still no Board agreement or public policy or statement on the extent to which adequate protection and worker safety may overlap.



Jessie H. Roberson

04/14/2017 _____
Date

Cameron Shelton

From: Daniel J. Santos
Sent: Friday, April 14, 2017 9:31 AM
To: Cameron Shelton; Shelby Qualls
Subject: RE: Notational Vote: Doc#2017-100-036A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress - YELLOW FOLDER

Disapproved with the following comment:

Clarifications or changes to the Board language in previous reports regarding worker safety at DOE defense nuclear facilities should be addressed via separate correspondence. The annual report to Congress should not be used as a vehicle to establish decisions of the Board. A policy statement by the Board regarding worker safety at DOE defense nuclear facilities may be necessary.

From: Cameron Shelton
Sent: Friday, April 14, 2017 9:05 AM
To: Bruce Hamilton <[REDACTED]>; Daniel J. Santos <[REDACTED]>; Jessie Roberson <[REDACTED]>; Joyce Connery <[REDACTED]>; Sean Sullivan <[REDACTED]>
Cc: Glenn Sklar <[REDACTED]>; Katherine Herrera <[REDACTED]>; James Biggins <[REDACTED]>; Richard Reback <[REDACTED]>; Steven Stokes <[REDACTED]>; Richard Tontodonato <[REDACTED]>; ExSec <[REDACTED]>; Adam Poloski <[REDACTED]>; Chris Roscetti <[REDACTED]>; John Pasko <[REDACTED]>; Timothy Dwyer <[REDACTED]>
Subject: Notational Vote: Doc#2017-100-036A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress - YELLOW FOLDER

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress

DOC# 2017-100-036A

Office Directors have provided their input.

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Joyce L. Connery

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-036, 2016 DRAFT Annual Report to Congress

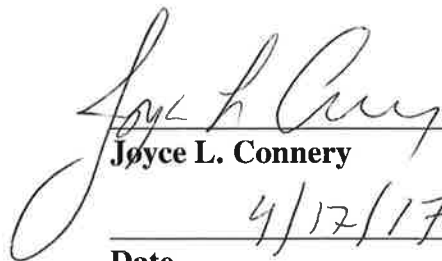
Doc Control#2017-100-036A

Approved _____ **Disapproved** X **Abstain** _____

Recusal – Not Participating _____

COMMENTS: **Below** X **Attached** _____ **None** _____

The Board has historically included worker protection as party of its statutory mission and it has been recognized by previous Boards, this Board, Congress and the Department of Energy.



Joyce L. Connery

4/17/17
Date