The Under Secretary of Energy
Washington, DC 20585

FEB 14 2003

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW, Suite 700
Washington, D.C. 20004

Dear Mr. Chairman:

Thank you for your letter dated January 24, 2003, providing initial comment on two of the proposed dispositions of recommended changes to certain Department of Energy (DOE) Orders. I recognize that the Board will conduct a more comprehensive review of all the dispositions and provide additional comments as appropriate, consistent with its statutory charter, once the dispositions have been issued and implemented through the normal directives development process; however, you may find the following perspectives useful in arriving at your final comments.

Applicability to Contractors

The Panel's proposed disposition would instruct the Office of Primary Interest for the Directives Management Order to revise the current language to restrict applicability of directives' contractor requirements documents to site/facility management contacts and to restrict flow down of requirements to subcontracts to what is necessary to ensure the purposes of the Orders are achieved. The Board commented that this proposed restriction would leave some contractors that were doing hazardous work outside the umbrella of DOE's Integrated Safety Management System and that it would conflict with the flow down requirements of the DOE Acquisition Regulation's clause on Integrated Safety Management (ISM).

We have reviewed your comments and assure you that we do not plan to preclude directives from having impact on non-site/facility management contracts. The instruction to be given in the Directives Management Order will be that contractor requirements documents are not available as media for providing direction to non-site/facility management contractors. The reason is contractor requirements documents are incorporated into contracts through the Laws, Regulations, and DOE Directives clause, which is only available for site/facility management contracts. To the

extent that in the past some program offices attempted to use contractor requirements documents to cover other contracts, they did not succeed since those contracts did not include the Laws, Regulations, and DOE Directives clause. The point of the Panel's instruction is that the use of a contractor requirements document to give direct guidance to contractors is only appropriate for site/facility management contracts. To the extent that a program office wants to affect other contracts, the Directives Management Order will direct the program office to do so by including instruction in its directive to the Department's Procurement Executives to develop the appropriate guidance through the regulatory process, congruent with law and regulation, and issue it as a contract clause.

As for subcontracts, the language we plan to include in the Directives Management Order and in the DOE Acquisition Regulation clauses, such as the ISM clause, is a change to the extent that the Department will be requiring contractors to exercise a degree of cost accountability as they ensure safety requirements are intelligently implemented. Our intent is to preclude needless flow-down of requirements simply because it is easier (and with little, if any, cost to the contractor) to do so.

DOE Order 225.1A, Accident Investigation

The Panel's proposed disposition would instruct the Office of Primary Interest for the Order to revise the current language as it relates to uncertainty over the categorization of an accident investigation as Type A or Type B. The current language in the Order calls for any uncertainty in the categorization to be resolved by the Head of the Field Element consulting with the Office of the Deputy Assistant Secretary for Oversight (now Corporate Safety Assurance). The language is silent concerning the appropriate disposition if uncertainty remains after such consultation. The Panel would direct that the language be revised to state that if uncertainty does remain, it would initially be resolved by establishing a Type B Accident investigation, which would changed to Type A if facts warrant. The Board commented that the default Accident Investigation should be Type A, with allowance to downgrade, if appropriate. After reviewing your comment, we still believe the most cost effective way to resolve such uncertainty is to start the process with the least burdensome administrative approach and apply it until such time that facts lead to re-categorization as Type A. Because of your comment, however, we have revised the disposition document to clarify our intent.

We very much appreciate the views and comments you have submitted during the course of our review of DOE Orders. We look forward to receiving any further comments and to working with you in implementing the results of the review.

Sincerely,

Robert G. Card