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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004
(202) 208-6400



May 14, 1998

The Honorable Federico F. Peña
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Secretary Peña:

Congress has asked the Defense Nuclear Facilities Safety Board (Board) to prepare a report with evaluations and assessments of proposals to externally regulate the Department of Energy's (DOE) defense nuclear facilities. The Board and its staff have been working on responses to the sixteen items that Congress specified for the report in section 3202 of the National Defense Authorization Act for FY-1998 (see Enclosure).

To date, we have relied upon published information in beginning to evaluate issues regarding proposals to regulate defense nuclear facilities. To help the Board assemble all the facts necessary for its report, the Board has requested information from DOE and the Nuclear Regulatory Commission by letters dated December 23, 1997, and April 9, 1998, respectively. The Board would appreciate receiving from DOE copies of such data, reports, information, and expressions of views as DOE believes are relevant to the Board's consideration of external regulation. Among other things, the Board requests DOE to provide the following specific information:

- (1) Congress referred to DOE's "proposal to place Department of Energy defense nuclear facilities under the jurisdiction of external regulatory agencies." To what extent, if any, is DOE's current position on the desirability of externally regulating DOE nuclear facilities different from that indicated in the DOE-NRC Memorandum of Understanding of 11/21/97? Please identify which defense nuclear facilities, if any, DOE believes should be subject to licensing or regulation and which defense nuclear facilities should continue to be subject to external non-regulatory oversight.
- (2) Please identify the regulatory framework DOE envisions as possibly appropriate for existing defense nuclear facilities, for new construction, and for decommissioning.
- (3) For each facility identified as a candidate for regulation, we would like to have your estimate of the direct and indirect costs that will be incurred by the regulator and the regulatee (DOE/contractor) to develop and implement the regulations and

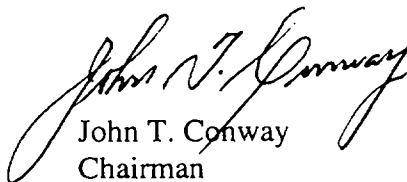
license conditions and to bring the facility into compliance with NRC regulatory standards.

- (4) Please indicate your views on whether the DOE, the contractor, or both should be considered the "licensee" or party regulated under the contemplated external regulatory system; and whether the contractor should be subject to NRC coverage under subsections a, b, and c of Section 170 of the Atomic Energy Act of 1954 (the Price-Anderson Act)?
- (5) What additional benefits to the safety and health of workers and the public would DOE expect to derive from external regulation of the facilities identified above? In particular, would DOE expect further reduction in accidents and "work days lost" as a result of the regulatory program? Please provide statistical information, comparisons with commercial accident rates, reports, and other data that DOE possesses which bear upon this determination.

The Board is in the process of drafting responses to Congress that encompass the specific questions asked and would appreciate receipt of the information identified above as soon as possible. To be useful, as much of the information as possible should be in our hands within the next 60 days. As our work progresses, we may have need for additional information from DOE.

If you have any questions about this request, the other Board Members and I are available to answer your questions and would be available to meet with you at a time convenient to you. DOE staff may contact the Board's General Counsel, Robert M. Andersen, at (202) 208-6387 at any time regarding this information request.

Sincerely,



John T. Conway
Chairman

Enclosure

c: Mark B. Whitaker, Jr.

National Defense Authorization Act for Fiscal Year 1998

SEC. 3202. REPORT ON EXTERNAL REGULATION OF DEFENSE NUCLEAR FACILITIES.

(a) REPORTING REQUIREMENT- The Defense Nuclear Facilities Safety Board (in this section referred to as the 'Board') shall prepare a report and make recommendations on its role in the Department of Energy's decision to establish external regulation of defense nuclear facilities. The report shall include the following:

- (1) An assessment of the value of and the need for the Board to continue to perform the functions specified under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).
- (2) An assessment of the relationship between the functions of the Board and a proposal by the Department of Energy to place Department of Energy defense nuclear facilities under the jurisdiction of external regulatory agencies.
- (3) An assessment of the functions of the Board and whether there is a need to modify or amend such functions.
- (4) An assessment of the relative advantages and disadvantages to the Department and the public of continuing the functions of the Board with respect to Department of Energy defense nuclear facilities and replacing the activities of the Board with external regulation of such facilities.
- (5) A list of all existing or planned Department of Energy defense nuclear facilities that are similar to facilities under the regulatory jurisdiction of the Nuclear Regulatory Commission.
- (6) A list of all Department of Energy defense nuclear facilities that are in compliance with all applicable Department of Energy orders, regulations, and requirements relating to the design, construction, operation, and decommissioning of defense nuclear facilities.
- (7) A list of all Department of Energy defense nuclear facilities that have implemented, pursuant to an implementation plan, recommendations made by the Board and accepted by the Secretary of Energy.
- (8) A list of Department of Energy defense nuclear facilities that have a function related to Department weapons activities.
- (9)(A) A list of each existing defense nuclear facility that the Board determines--
 - (i) should continue to stay within the jurisdiction of the Board for a period of time or indefinitely; and

(ii) should come under the jurisdiction of an outside regulatory authority.

(B) An explanation of the determinations made under subparagraph (A).

(10) For any existing facilities that should, in the opinion of the Board, come under the jurisdiction of an outside regulatory authority, the date when this move would occur and the period of time necessary for the transition.

(11) A list of any proposed Department of Energy defense nuclear facilities that should come under the Board's jurisdiction.

(12) An assessment of regulatory and other issues associated with the design, construction, operation, and decommissioning of facilities that are not owned by the Department of Energy but which would provide services to the Department of Energy.

(13) An assessment of the role of the Board, if any, in privatization projects undertaken by the Department.

(14) An assessment of the role of the Board, if any, in any tritium production facilities.

(15) An assessment of the comparative advantages and disadvantages to the Department of Energy in the event some or all Department of Energy defense nuclear facilities were no longer included in the functions of the Board and were regulated by the Nuclear Regulatory Commission.

(16) A comparison of the cost, as identified by the Nuclear Regulatory Commission, that would be incurred at a gaseous diffusion plant to comply with regulations issued by the Nuclear Regulatory Commission, with the cost that would be incurred by a gaseous diffusion plant if such a plant was considered to be a Department of Energy defense nuclear facility as defined by chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

(b) **COMMENTS ON REPORT-** Before submission of the report to Congress under subsection (c), the Board shall transmit the report to the Secretary of Energy and the Nuclear Regulatory Commission. The Secretary and the Commission shall provide their comments on the report to both the Board and to Congress.

(c) **SUBMISSION TO CONGRESS-** Not later than six months after the date of the enactment of this Act, the Board shall provide to Congress an interim report on the status of the implementation of this section. Not later than one year after the date of the enactment of this Act, and not earlier than 30 days after receipt of comments from the Secretary of Energy and the Nuclear Regulatory Commission under subsection (b), the Board shall submit to Congress the report required under subsection (a).

(d) **DEFINITION-** In this section, the term 'Department of Energy defense nuclear facility' has the meaning provided by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).