

Amendment by Board Member, Bruce Hamilton to YELLOW FOLDER DOC#2016-077 Plutonium Facility
Seismic Qualification of Fire Suppression Systems, Los Alamos National Laboratory

Amendment: Delete the last sentence of the cover letter, "Pursuant to 42 U.S.C. § 2286b(d), we request a report within 90 days of receipt of this letter, a written response identifying, for each issue in the enclosed report, corrective actions taken or planned."

Justification: 42 U.S.C. § 2286b(d) authorizes the Board to, "... establish reporting requirements for the Secretary of Energy..." The Board should generally practice a narrow interpretation of this statutory authority and use it with discretion, such as when periodic recurring reports on program status are warranted.

42 U.S.C. § 2286b(d) should not be used as a mechanism to convey either an explicit or an implied mandate for the NNSA Administrator to carry out certain activities. In this case, that appears to be the message.

Likewise, 42 U.S.C. § 2286b(d) should not be used as a surrogate for a recommendation. In the event that the matters identified in the Staff Issue Report, either individually or in totality, challenged the "...adequate protection of the public health and safety ...," the statutorily appropriate path would be to recommend action to the Secretary of Energy. In this case, the staff have not indicated that this threshold has been reached.

A narrow interpretation of 42 U.S.C. § 2286b(d) should not in any way constrain the staff from requesting information from the Department at any level through routine staff-to-staff communications. Should the Department not be forthcoming in providing relevant information, the staff may elevate the request to incrementally higher levels within the Department until the information is provided.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

Doc Control#2016-077A


The Board, with Board Member(s) Sean Sullivan, Daniel J. Santos, Bruce Hamilton *approving*, Board Member(s) Joyce L. Connery, Jessie H. Roberson *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to approve the above document on April 25, 2016.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	04/25/16
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/25/16
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/25/16
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/22/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	04/22/16

*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.


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: Joyce L. Connery

SUBJECT: Amendment by Board Member, Bruce Hamilton to Yellow Folder
Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression
System, LANL

Doc Control#2016-077A

Approved _____

Disapproved _____

Abstain _____

Recusal - Not Participating _____

COMMENTS:

Below _____

Attached _____

None _____

Joyce L. Connery

Joyce L. Connery

4/25/16

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077, Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

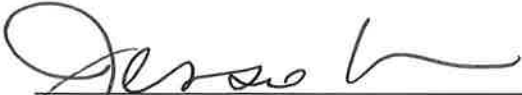
Doc Control#2016-077A

Approved _____ Disapproved X _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

I do not support the proposed amendment and believe the use of a reporting requirement for this communication is appropriate. Generally speaking, I believe if the Department must generate information to respond to a staff concern the Board, itself, should be involved in the determination and the communication. This ensures that the Departmental leadership understand the difference in staff interactions and Board interest and further, ensures the leadership of the Department understands when the Board itself is evaluating a potential issue/s of concern independent of the multitude of issues discussed among the respective staffs.



Jessie H. Roberson
April 25, 2016

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Amendment by Board Member, Bruce Hamilton to Yellow Folder
Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression
System, LANL

Doc Control#2016-077A

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

The amendment proposes to strike the reporting requirement from the proposed letter, which currently reads, "Pursuant to 42 U.S.C. § 2286b(d), we request a report within 90 days of receipt of this letter, a written response identifying, for each issue in the enclosed report, corrective actions taken or planned."

I agree with justification for the amendment provided by Board Member Hamilton that the Board's statutory reporting power should not be used as mechanism to convey a mandate for action by DOE/NNSA, and that a formal recommendation is the proper vehicle to convey a mandate if and when such a mandate becomes necessary for public safety.



Sean Sullivan

4/25/16

Date

Lotus Smith

From: Daniel J. Santos
Sent: Friday, April 22, 2016 11:23 AM
To: Lotus Smith; Shelby Qualls
Subject: Re: Notational Vote: Doc#2016-077A Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

Approved with the following comments:

1. The sentence subject of this amendment states - "for each issue in the enclosed report." This phrase limits NNSA written response. While the DNFSB staff report is comprehensive it may not include all FSS vulnerabilities relevant to safety.
2. Taken together - "for each issue in the enclosed report, corrective actions taken or planned." I consider this language to be somewhat premature. Corrective actions, if any, are the decision of NNSA and should be the result of their assessment and decision making process. I expect that NNSA will take our technical input into consideration as part of their processes and we should communicate this expectation in writing. Before any discussions regarding corrective actions, we should first obtain in writing information regarding NNSA assessment of the FSS vulnerabilities and their impact on the facility's current and planned safety posture.

From: Lotus Smith
Sent: Friday, April 22, 2016 10:06 AM
To: Bruce Hamilton; Daniel J. Santos; Jessie Roberson; Joyce Connery; Sean Sullivan
Cc: Shelby Qualls; Nora Khalil; Lotus Smith
Subject: Notational Vote: Doc#2016-077A Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

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
Re: Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

16-077A

Office Directors have provided their input.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Amendment by Board Member, Bruce Hamilton to Yellow Folder Doc#2016-077 Plutonium Facility Seismic Qualification of Fire Suppression System, LANL

Doc Control#2016-077A

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

Recusal – Not Participating

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

This amendment proposes deleting the last sentence of the cover letter: “Pursuant to 42 U.S.C. § 2286b(d), we request a report within 90 days of receipt of this letter, a written response identifying, for each issue in the enclosed report, corrective actions taken or planned.”

42 U.S.C. § 2286b(d) authorizes the Board to, “...establish reporting requirements for the Secretary of Energy....” The Board should generally practice a narrow interpretation of this statutory authority and use it with discretion for information-gathering and obtaining expert knowledge and advice from DOE. This interpretation is consistent with the legislative history of the Board’s founding. (See House Conference Report No. 100-989, “Joint Explanatory Statement of the Committee of Conference, National Defense Authorization Act, Fiscal year 1989,” page 490; and, Senate Committee on Armed Services Report 100-232, Report Together with Additional Views to Accompany S. 1085, Nuclear Protections and Safety Act of 1987,” page 26.)

42 U.S.C. § 2286b(d) should not be used as a mechanism to persuade, either explicitly or implicitly, the NNSA Administrator to carry out certain activities. In this case, tying the reporting requirement to, “...specific corrective actions taken or planned...,” appears to convey that message.

Likewise, 42 U.S.C. § 2286b(d) should not be used as a surrogate for a recommendation. In the event that the matters identified in the Staff Issue Report, either individually or in totality, challenged the “...adequate protection of the public health and safety...,” the statutorily

preferred path would be to recommend action to the Secretary of Energy. In this case, the staff have not offered an opinion that this threshold has been reached.

I therefore Approve this amendment.

Handwritten signature of Bruce Hamilton in cursive script.

Bruce Hamilton

22 APRIL 2016

Date