ARCHIVE: Doc#2017-100-045A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting

**Proposed Amendment:** Revise the cover letter as shown in the attached file.

Justification: 42 U.S.C. § 2286b(d) authorizes the Board to, "... establish reporting requirements for the Secretary of Energy ...," (emphasis added). The Board should generally practice a narrow interpretation of its statutory authority to require reports. This authority should be used with discretion, such as when information has been difficult to obtain through informal staff-to-staff interaction or 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 explicit or an implied direction for the Secretary to carry out an activity. 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 issues 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, and the language of the cover letter should not overstate the Board's "concern."

### **AFFIRMATION OF BOARD VOTING RECORD**

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting

#### Doc Control#2017-100-045A

The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton *approving*, Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, have voted to disapprove the above document on May 3, 2017.

The votes were recorded as:

× ×	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan					$\boxtimes$	05/02/17
Bruce Hamilton					$\boxtimes$	05/02/17
Jessie H. Roberson		$\boxtimes$				05/02/17
Daniel J. Santos		$\boxtimes$		,	$\boxtimes$	05/03/17
Joyce L. Connery		$\boxtimes$			$\boxtimes$	05/02/17

<sup>\*</sup>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#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting
Doc Control#	2017-100-045A
Approved_X	Disapproved Abstain
Recusal - No	t Participating
COMMENTS	S: Below_X Attached None
deletes langua will be weake	ant deletes the reporting requirement from the proposed communication. It also use expressing to the Secretary a "concern" of the Board that DOE safety oversight ned by recent changes to the DOE Order specifying required reports by DOE incidents or unplanned events. I approve of these deletions.
We should wa cases where th	vidence that DOE safety oversight will actually be weaker under the revised order. it until an order has been implemented before passing judgment on it, except in the deficiencies are so great as to threaten the adequate protection of the public ety. This is not such an instance.
planned by DO Such supplem Board's statutissue, and can changes. Cong limited use of and safety. The additional info	reporting requirement seeks information regarding possible "supplemental action" DE line management. The reporting requirement should not be used in this manner ental action, if any, has not yet been determined, and we know that. Using the ory power to require a report will create a public discourse on an internal DOE have no other purpose than to coerce the Secretary into reversing some of the gress provided to the Board the power to issue formal recommendations but strictly that power to circumstances involving the adequate protection of the public health the reporting requirement is intended to be used only for situations requiring formation. If used coercively the Board can, without limit, attempt to micromanage secretary of Energy.
	n
	//s// Sean Sullivan
	5/2/17
	Data Data

ARCHIVE: Doc#2017-100-045A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting

# DEFENSE NUCLEAR FACILITIES SAFETY BOARD NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Amendment by Vice Chairman Hamilton to YELLOW FOLDER

Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence

Reporting

Doc Control#2017-100-045A

Approved_X_	Disap	proved	Abstain_	
Recusal - Not Part	ticipating	-		;
COMMENTS:	Below_X_	Attached	None	

This Amendment will remove the reporting requirement from the Board Letter.

42 U.S.C. § 2286b(d) authorizes the Board to, "... establish reporting requirements for the Secretary of Energy ...," (emphasis added). The Board should generally practice a narrow interpretation of its statutory authority to require reports. This authority should be used with discretion, such as when information has been difficult to obtain through informal staff-to-staff interaction or 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 explicit or an implied direction for the Secretary to carry out an activity. 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 issues 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, and the language of the cover letter should not overstate the Board's "concern."

I therefore approve.

Bruce Hamilton

02 MAY 2017

Date

ARCHIVE: Doc#2017-100-045A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD NOTATIONAL VOTE RESPONSE SHEET

FROM:	Jessie H. Roberson	
SUBJECT	: Amendment by Vice Chairman Hamilton t 100-045, Board Letter on DOE Order 23	
Doc Contr	ol#2017-100-045A	•
$\mathbf{Approved}_{\_}$	DisapprovedX_	Abstain
Recusal – I	Not Participating	
COMMEN	NTS: Below X Attached	None
COMMIN	115. Delow_A_ Attacheu	None

While I support some of the proposed editorial changes, I do not support elimination of the reporting requirement as its use is consistent with the Board's enabling statue. The reporting requirement serves to ensure a Board concern is raised to the attention of the Department's leadership for consideration, which is not the statutory role of the Board's staff.

Jessie H. Roberson

Date

ARCHIVE: Doc#2017-100-045A, Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting

#### **Cameron Shelton**

From:

Daniel J. Santos

Sent: To:

Wednesday, May 03, 2017 11:06 AM Cameron Shelton; Shelby Qualls

Subject:

RE: Notational Vote: Doc#2017-100-045A, Amendment by Vice Chairman Hamilton to

YELLOW FOLDER Doc#2017-100-045, Board Letter on DOE Order 232.2A on Occurrence

Reporting - YELLOW FOLDER

#### Disapproved with the following comment:

I support the original characterization of the concerns. The impact of changes to occurrence reporting resulting from deleted Order requirements could lead to less discipline toward nuclear safety and could adversely impact the safety posture of the defense nuclear complex. Studies of major accidents across many industries continue to reinforce the importance of having a strong learning culture with adequate information flow and accountability at all levels and across all stakeholders. DOE's action to revise DOE Order 232.2A appears to be a step in the opposite direction and could end up being a contributing factor that negatively impacts the sustainability of adequate protection of the health and safety of the public.

From: Cameron Shel	lton			
Sent: Tuesday, May	02, 2017 11:06 AM			
To: Bruce Hamilton	; Daniel J. Sar	ntos ·	>; Jessie Ro	<u>berson</u>
	; Joyce Connery	; Sean Sullivan <		•
Cc: Glenn Sklar	; Katherine Herrera <		; James Biggins <	>;
Richard Reback	; St <u>even Stokes</u> <		; Richard Tontodonato <	
ExSec •	-; Adam Poloski <	; Chris Roscett	i•	John Pasko
•	; Timothy Dwyer <	>		
Subject: Notational	Vote: Doc#2017-100-045A, Amendmer	nt by Vice Chairmar	Hamilton to YELLOW F	OLDER Doc#2017-

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

100-045, Board Letter on DOE Order 232.2A on Occurrence Reporting - YELLOW FOLDER

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

FROM:

Members of the Board

Amendment by Vice Chairman Hamilton to YELLOW FOLDER Doc#2017-100-045,

**Board Letter on DOE Order 232.2A on Occurrence Reporting** 

### DOC# 2017-100-045A

Office Directors have provided their input.

Approved	_
Disapproved_	
Abstain	

# DEFENSE NUCLEAR FACILITIES SAFETY BOARD NOTATIONAL VOTE RESPONSE SHEET

rkowi:	Joyce L. Connery	
SUBJECT:	Amendment by Vice Chairman Hamilt Doc#2017-100-045, Board Letter on DC Reporting	
Doc Control#	2017-100-045A	
Approved	Disapproved_X	Abstain
Recusal – Not	Participating	
COMMENTS	Below_X Attached	None

I disagree with the Board Member's view of how the Board should use its authority to obtain information from the Department of Energy. In this instance, we have been told that supplementary actions are planned and the Board is simply asking to be apprised of those plans so that we can make a determination as to whether the implementation of Order 232.2A as written would erode safety at the sites we are charged with overseeing. This is not a burdensome request.

Joyce L. Connery

Date