

[DNFSB LETTERHEAD]

November 22, 1996

Mr. Mark B. Whitaker, Jr.
Departmental Representative to the
Defense Nuclear Facilities Safety Board
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Mr. Whitaker:

Enclosed are the staff's comments on DOE Order 251.1A and its associated manual DOE M 25 1. 1-1A.

As Mr. Andersen stated in his letter to you, dated November 20, 1996, our review indicates that significant issues remain open. Excepting the issues associated with the "Glossary of Terms", minor word changes will correct the problems we have identified.

Please let me know if I can provide you with any additional information that may expedite resolution of these issues.

Sincerely,

Richard A. Azzaro
Deputy General Counsel

STAFF COMMENTS

Several issues remain open due to language that is inconsistent with an agreement in principle we thought was reached regarding key provisions of the subject Order and Manual. Two additional issues have emerged since our last set of comments provided to DOE staff in early October. Both of these more recent issues were presented to the Board during the November 7, 1996 public hearing.

I. The issues that continue to be unresolved are:

- A. HR involvement in aspects of DOE directives development that is more appropriately controlled by the Office of Primary Interest still needs clarification.

See, Order 251.1.1 A, Page 3 ¶e;

See, Manual Pages 11-1, ¶1.e., 11-3 paras.(4),(7) and (8)(This can be cured by inserting language that clearly states that **after any final editing done by the** Directives System Manager, the Office of Primary Interest has the **responsibility for final approval** of directives before distribution for **comment or review** to Department Elements, or to contractors and customers. Same language for **final issuance**. These changes then need to be reflected in the "Coordination and Issue Resolution Process" in the Manual Page 111-2, ¶3.

See, Manual Page 111-1, ¶ b; (this can be cured by clearly stating "... resolves **the technical issues** that cannot be resolved by the Office of Primary Interest or **administrative issues** ...

See, Manual Page 111-3, ¶1. (this can be cured by inserting the word "final" before the word "approval").

B. Other Matters

- The Order, Manual and Guide for 251.1 do not provide any basis for cost validation. Also there is language inadvertently dropped. See, Order 251.1A page 2, ¶ 4.d.
- The terms "commentor", "reviewer", and "customer" seemed to be used interchangeably. Who are they, and specifically, who is the "customer" and how does one ascertain "customer" status?
- Sunset provisions no longer apply to "Safety Policies, Orders, and Manuals" at Defense Nuclear Facilities.

Why are the terms "health" or "environment" not included?

2. Issues that emerged after our last comments.

- Issuance of the "Glossary of Terms" is projected for March '97.

There is no mention in Order 251 or the associated Manuals to what status the Glossary is to have. i.e. requirement or guidance.

Safety Orders with terms of art stripped, have been issued in final and possibly placed in contracts. How does one resolve the meaning of these terms that have been placed in the Glossary?

Why do some safety Orders retain definitions and some do not? For example, Order 251.1A and its associated manual retain key terms with definitions.

Stripping terms from regulations triggers questions of adequate notice and due process of law.

The stripping of terms of art from the body of the relevant order or regulation is not DOE's historical practice or that of the commercial industry.

- Issuance of safety orders without providing DNFSB staff opportunity to review final version

This violated the Secretary's commitment to the Board

The circumstances surrounding the issuance of these orders without providing DNFSB staff an opportunity for review of the final suggests that further procedural safeguards need to be built into Order 251.

- The continued use of the word "Sunset" to now characterize the 2 year review of directives. The purpose and intent for continuing to use the term is not known. See Order 251.1A, page 2, ¶ 4.a.