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# DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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98-0001127



April 9, 1998

The Honorable Shirley Ann Jackson  
Chairman  
Nuclear Regulatory Commission  
Washington, DC 20555

Dear Dr. Jackson:

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). Congress referred to the Nuclear Regulatory Commission (NRC) in items 5, 15, and 16 and asked the Board to provide:

- (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;
- (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; and
- (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.*).

In addition, Congress asked for evaluations of issues and problems associated with proposed "privatization" of certain DOE defense nuclear facilities, such as the Tank Waste Remediation System (TWRS) at the Hanford Site, Richland, Washington. NRC is listed as licensing body for Phase II of TWRS in DOE's draft request for proposals.

The Board and its staff have, to date, relied upon published information in beginning to evaluate these and other issues regarding proposals to regulate defense nuclear facilities. To help the Board assemble all the facts necessary for its report, the Board would appreciate receiving from NRC copies of such data, reports, information, and expressions of views as the Commission believes are relevant to the Board's consideration of the items listed and external regulation in general. Among other things, the Board requests NRC to provide the following specific information:

- (1) A list of all existing or planned DOE defense nuclear facilities which NRC believes are similar to facilities currently under the regulatory jurisdiction of the NRC. For each DOE facility deemed similar, please identify the analogous category of NRC facilities, the current NRC regulatory requirements governing those facilities, the basis for determining that the facilities are similar, and the direct and indirect costs incurred by NRC to license and annually regulate each facility type deemed similar to a defense nuclear facility.
- (2) Since regulatory costs will be affected by the assumed regulatory (e.g., certification vs regulations without licensing vs licensing) framework, what framework does the NRC envision as appropriate for existing defense nuclear facilities? For new construction? For decommissioning?
- (3) NRC performed a certification for the Paducah Gaseous Diffusion Plant pursuant to 42 U.S.C. § 2297 et seq., and 10 CFR Part 76. Please provide the direct and indirect costs that were incurred by (a) the NRC, and (b) the United States Enrichment Corporation to develop the regulations and certification process, to implement the certification process, and to achieve compliance with the certification standards at the Paducah Gaseous Diffusion Plant. Using the gaseous diffusion plant as a reference nuclear facility, what is NRC's estimate of the direct and indirect costs that would be incurred if such a plant were subjected to:

Case 1, full commercial licensing by NRC, including comprehensive construction/operational licensing, together with compliance activity and enforcement;

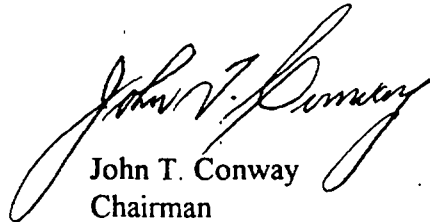
Case 2, NRC certification of plant as compliant with NRC requirements or equivalent as a condition of operations, together with compliance activity and enforcement; and

Case 3, independent NRC assessments with advisories and/or recommendations to the Department of Energy.

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 NRC.

If you or the other NRC Commissioners 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 and the other Commissioners at a time convenient to you. NRC 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: The Honorable Nils J. Diaz, Commissioner  
The Honorable Greta Joy Dicus, Commissioner  
The Honorable Edward McGaffigan, Jr., Commissioner

## 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).