

January 24, 2003

The Honorable Robert Gordon Card
Under Secretary of Energy, Science and Environment
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Mr. Card:

The Defense Nuclear Facilities Safety Board (Board) appreciates the briefing you provided on January 9, 2003, regarding the review of the Department of Energy's (DOE) Orders that recently was completed by your office. As we discussed, the Board is mandated by law (42 U.S.C. § 2286a(a)(1)) to review and evaluate the content of all applicable DOE Orders, regulations, and requirements. The information you provided will assist the Board in satisfying this responsibility.

Based upon an initial review of disposition directions you have issued to the Offices of Primary Interest for each Order, the Board is concerned that two of the proposed actions may have detrimental impacts:

Applicability to Contractors—Restricting the applicability of DOE Orders to only major facility management contractors could result in those contractors directly responsible for hazardous work being outside the umbrella of DOE's Integrated Safety Management (ISM) System. In addition, limiting the applicability of Contractor Requirements Documents to DOE's site/facility management contracts conflicts with the requirements of DOE Acquisition Regulation (DEAR) Clause 970.5223-1 (the ISM clause), which mandates that applicable contract requirements be passed down to subcontractors. Note that this proposed change affects several of the Orders reviewed.

DOE Order 225.1A, Accident Investigations—Changing the default Accident Investigation Board from Type A to Type B, with direction to upgrade if necessary, is non-conservative. The default Accident Investigation Board should be Type A, with an allowance to downgrade if appropriate.

The Board's staff will conduct detailed reviews of any proposed revisions to DOE Orders of interest to the Board as they are made available by DOE during the normal directives development process, and will provide comments using the existing protocol. This protocol was established by mutual agreement in 1995 and has been executed by DOE's Office of the Departmental Representative to the Board since that time.

Sincerely,

John T. Conway
Chairman

c: Mr. Mark B. Whitaker, Jr.