

**In the Matter of:**

**Defense Nuclear Facilities Safety Board**

*August 28, 2018*  
*Public Hearing*

**Condensed Transcript with Word Index**



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8 FIRST PUBLIC HEARING ON THE  
9 DEPARTMENT OF ENERGY'S INTERFACE  
10 WITH THE  
11 DEFENSE NUCLEAR FACILITIES SAFETY BOARD  
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14  
15 August 28, 2018  
16 9:00 a.m.  
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19 Defense Nuclear Facilities Safety Board  
20 625 Indiana Avenue, NW  
21 Washington, DC 20004  
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1 P R O C E E D I N G S  
2 - - - - -  
3 MR. HAMILTON: Good morning, my name is Bruce  
4 Hamilton, I am the acting Chairman of the Defense  
5 Nuclear Facilities Safety Board. I will preside over  
6 this morning's public hearing.  
7 I now call this hearing into order. I would  
8 like to introduce my colleagues on the Board: Two seats  
9 to my right is Board Member Jessie Roberson; to my  
10 immediate right is Board Member Joyce Connery; and to my  
11 left is Board Member Daniel Santos. We four constitute  
12 the Board.  
13 The Board's acting general counsel, Ms. Casey  
14 Blaine, is seated two seats to my far right. Several  
15 leaders and members of the Board staff who are closely  
16 involved with the oversight of the Department of  
17 Energy's defense nuclear facilities are also here, and I  
18 would like to recognize the Honorable Jack Crawford.  
19 Oh, there you are right there, Mr. Crawford, right up  
20 front, who was one of the original Board members. So,  
21 welcome, Mr. Crawford. Nice to see you.  
22 The goal for this hearing is to gather  
23 information regarding the objectives of the Department's  
24 Departmental Order 140.1, Interface with the Defense  
25 Nuclear Facilities Safety Board, the Board's access to

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1 information, facilities and personnel, and potential  
2 impacts to the Board's Resident Inspector Program.  
3 The Board's enabling legislation contained  
4 within the Atomic Energy Act as amended defines this  
5 Agency's authorities, responsibilities, functions and  
6 organizational structure. The enabling legislation  
7 assigns responsibilities to the Secretary of Energy in  
8 his role as the owner and regulator of the Department's  
9 complex of sites and facilities regarding cooperation  
10 with the Board and providing the Board with, and I  
11 quote, "ready access to such facilities, personnel and  
12 information as the Board considers necessary to carry  
13 out its responsibilities."  
14 The order that is the topic of today's hearing  
15 is now the primary vehicle that the Department of Energy  
16 uses to implement the Secretary's responsibilities for  
17 cooperation with the Board. Prior to May of 2018, the  
18 Department implemented its interface with the Board  
19 through a DOE manual, the lower level department  
20 directive that was developed through close cooperation  
21 between our two agencies.  
22 The new order did not receive that same level of  
23 close cooperation during development. Because of  
24 fundamental changes introduced in the order, the Board  
25 voted to hold this public hearing to discuss those

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1 changes with Department's leadership.  
 2 In the first session, the Deputy Secretary of  
 3 Energy will describe the Department's position on  
 4 interface between the Department and the Board. In the  
 5 second session, the Board will hear testimony regarding  
 6 changes contained in the order, including access to  
 7 information, facilities and personnel, and potential  
 8 impacts to the Board's Resident Inspector Program.  
 9 In the third session, members of the public may  
 10 provide comment.  
 11 The Board announced this morning's hearing on  
 12 July 19th on its public website and subsequently posted  
 13 a notice in the Federal Register on August 10th, 2018.  
 14 To ensure accurate and timely information, this hearing  
 15 is being videostreamed live, as well as recorded through  
 16 video recording and a verbatim transcript. The  
 17 transcript, associated documents, public notice and  
 18 video recording will be available for viewing on our  
 19 public website. The Board will make the video recording  
 20 available for at least 60 days.  
 21 Per the Board's practice, and as stated in the  
 22 agenda, we will welcome comments from interested members  
 23 of the public at approximately 11:30. A list of those  
 24 speakers who have contacted us is posted at the entrance  
 25 to this room. In general, we have listed the speakers

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1 in the order in which they contacted us, or, if  
 2 possible, when they wished to speak. I will call the  
 3 speakers in this order and ask that each speaker states  
 4 his name or her name and affiliation, if any, at the  
 5 beginning of that session.  
 6 Members of the public who wish to provide  
 7 comments but did not have the opportunity to notify us  
 8 ahead of time may indicate their desire to comment on a  
 9 sign-up sheet on the table at the entrance to this room.  
 10 They will speak in the order in which they sign up,  
 11 following those who registered ahead of time.  
 12 To give everyone wishing to make a presentation  
 13 an equal opportunity, speakers will kindly limit their  
 14 comments to five minutes, and I'm going to be pretty  
 15 rigorous about that. Information should be limited to  
 16 comments, technical information or data concerning the  
 17 subjects of this public hearing. The Board members may  
 18 question anyone providing comments.  
 19 The record of this hearing will remain open  
 20 until September 28th, 2018. Until that date, members of  
 21 the public, including those observing today's hearing  
 22 live via videostreaming, may submit a written statement  
 23 to the Board to be included in the record. Contact  
 24 information for submitting a statement is on our public  
 25 website.

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1 The Board reserves the right to regulate the  
 2 course of this hearing, to recess, reconvene, postpone  
 3 or adjourn this proceeding, and to otherwise exercise  
 4 our authority under the Atomic Energy Act of 1954, as  
 5 amended.  
 6 This concludes my opening remarks as the acting  
 7 Chairman. I would now like to offer the following  
 8 personal remark as a Board member. On May 24th, by a  
 9 vote of three to one, the Board approved holding this  
 10 hearing. Mine was the dissenting vote. In the  
 11 following weeks, as I had more time to examine the  
 12 issues, I concluded that I was wrong. I now believe  
 13 this hearing is extremely important and timely, and were  
 14 the vote to be held again, I would wholly endorse it.  
 15 I want to thank Board Member Santos for  
 16 proposing to hold this hearing, as well as Board Members  
 17 Roberson and Connery who carried the motion when I was  
 18 not yet awakened to their wisdom.  
 19 I will now turn my fellow Board members for  
 20 their opening remarks.  
 21 Ms. Roberson?  
 22 MS. ROBERSON: I have no opening comments at  
 23 this time, Mr. Chairman.  
 24 MR. HAMILTON: Mr. Santos?  
 25 MR. SANTOS: Thank you. Acting Chairman

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1 Hamilton, Fellow Board Members, Mr. Brouillette,  
 2 Mr. Crawford and other distinguished guests,  
 3 stakeholders and members of the public today in  
 4 attendance or following today's hearing online: For the  
 5 Board to remain effective, careful attention must be  
 6 exercised and a high level of understanding,  
 7 transparency and stakeholder engagement must be achieved  
 8 when changes to the role of independent oversight is  
 9 being contemplated or implemented, whether through a  
 10 Department of Energy order or by any other means.  
 11 It is important that we as a Board thoroughly  
 12 assess the impact of any external factors in our ability  
 13 to perform our mission. The Board has a very important  
 14 role and I take very seriously the trust placed in us.  
 15 We provide confidence and transparency to the American  
 16 people through our independent safety oversight that the  
 17 elements of the Department of Energy execute the mission  
 18 safely, and that they do not become complacent in their  
 19 responsibilities to protect the American people against  
 20 undue risk from radiation in the activities performed at  
 21 the Department of Energy defense nuclear facilities.  
 22 The Board provides unique value in that we can  
 23 zero in and focus on safety without distractions. A  
 24 strong Board can help identify when key safety issues  
 25 are being displaced and bring them to the attention of

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1 the Secretary of Energy and the public in a timely  
 2 manner.  
 3 Last fall, following the issuance of the Deputy  
 4 Secretary of Energy memo dated October 13th, 2017 titled  
 5 Relationships with the Defense Nuclear Facilities Safety  
 6 Board, we requested that the Department of Energy brief  
 7 us on changes they planned to make to their interface  
 8 with the Board. My understanding coming out of that  
 9 briefing, which was held here at headquarters on October  
 10 26th, 2017, was that changes were going to be primarily  
 11 focused on clarifying the roles, responsibilities and  
 12 lines of accountability of the Department of Energy  
 13 internal elements, and that no changes will affect the  
 14 relationship with the Board or require any significant  
 15 adjustment on the part of the Board.  
 16 However, on May 14th, 2018, the Department of  
 17 Energy approved DOE Order 140.1. I was surprised to  
 18 learn that it contained many changes that affected their  
 19 relationship with the Board, that it challenged the  
 20 authorities contained in the Board's enabling statute,  
 21 and that it significantly altered the role of  
 22 independent safety oversight without an obvious and  
 23 commensurate improvement to safety.  
 24 Therefore, on May 24th, 2018, the Board approved  
 25 my proposal to conduct today's hearing so we can finally

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1 start a transparent dialogue. We should use the  
 2 information obtained during this series of hearings to  
 3 get a better understanding of the impact this new order  
 4 may have on the Board's ability to execute its mission  
 5 and how its implementation by DOE elements may generate  
 6 information gaps that should be addressed by both  
 7 agencies before they impact safety.  
 8 I appreciate and am encouraged by today's  
 9 participation by the Department of Energy, and I remain  
 10 optimistic that we will continue our strong and  
 11 productive relationship for the benefit of the American  
 12 people.  
 13 This concludes my opening statement. Thank you.  
 14 MR. HAMILTON: Thank you, Mr. Santos.  
 15 Ms. Connery?  
 16 MS. CONNERY: Thank you, Mr. Hamilton. I want  
 17 to thank the Deputy Secretary for taking his time to  
 18 come talk to us today. We have many questions with  
 19 regards to this order, and the Department's intent, the  
 20 expectations for the execution of this order, and  
 21 ultimately the impact that the full implementation of  
 22 this order will have on nuclear safety.  
 23 I don't want to take up too much time now, but I  
 24 would like to outline the questions that I would like  
 25 answered during the hearing. First, I would like to

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1 know what problem this order solves. After 30 years of  
 2 interaction with the Board, the Department has issued an  
 3 order, an order that doesn't simply codify the status  
 4 quo of the interactions between the Board and the  
 5 Department, but changes the interactions significantly,  
 6 and seems to endeavor to limit the Board's access and  
 7 authorities at defense nuclear facilities.  
 8 Therefore, my first basic question is, why?  
 9 What problem is the order designed to solve?  
 10 Secondly, the order is very specific in areas as  
 11 to execution of the order in the field. In fact, it is  
 12 accompanied by a desk reference that's 58 pages long.  
 13 I'd note we only have about 65 technical staff members,  
 14 so that's almost a page per person. It seems a little  
 15 bit overkill.  
 16 Therefore, my second question has to do with any  
 17 changes in expectations in the Department's view as to  
 18 how we do business. How do you envision we will do  
 19 business differently than we have done to date?  
 20 And, finally, I want to understand the  
 21 Department's philosophy on safety. We've seen a number  
 22 of trends where the Department has been making changes  
 23 in safety strategy, such as in 10 CFR 830, the Federal  
 24 rule on nuclear safety, which is in Federal rulemaking  
 25 right now, and some of its associated standards. There

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1 seems to be a connection between some of the elements of  
 2 interface Order 140.1 and DOE's efforts to have a  
 3 greater approach to safety, and I would like to  
 4 understand more about the Department's overall  
 5 intentions when it comes to nuclear safety.  
 6 With that, I look forward to your remarks.  
 7 MR. HAMILTON: Thank you, Ms. Connery.  
 8 Our first speaker this morning is the Deputy  
 9 Secretary of Energy, the Honorable Dan Brouillette.  
 10 Mr. Brouillette, welcome to our public hearing. We  
 11 appreciate your joining us today to discuss a topic that  
 12 is fundamental to our relationships. The floor is  
 13 yours, sir.  
 14 MR. BROUILLETTE: Thank you, Mr. Chairman. And  
 15 on behalf of the Secretary of Energy, I welcome the  
 16 opportunity to provide an opening statement at today's  
 17 public hearing on the Department's interface with the  
 18 DNFSB. Thank you, sir, for that opportunity, and thank  
 19 you to each one of the Board members for the opportunity  
 20 to be with you today.  
 21 Since becoming the Deputy Secretary of Energy, I  
 22 have had a pleasure of meeting with a number of Board  
 23 members individually and the Board staff. And as you  
 24 recall, I also visited with Board members and the staff  
 25 in November 2017 following the issuance of my October

13

1 2017 memorandum addressing the Department's relationship  
2 with the DNFSB, which provides my expectations for how  
3 the Department will interact with the Board and its  
4 staff.

5 As I stated last November, and which still holds  
6 true today, although the Board and the Department are  
7 independent agencies, the Secretary and I believe that  
8 we mutually serve beneficial and essential functions in  
9 that the Board's independent analysis, advice and  
10 recommendations are vital to DOE, ensuring adequate  
11 protection of public health and safety of the  
12 Department's defense nuclear facilities and its  
13 operations.

14 We have certainly benefited from your technical  
15 expertise, your insights, and your recommendations for  
16 many, many years; however, we also understand that when  
17 it comes to the safe operations of DOE sites and  
18 facilities, the buck stops squarely at our door, and we  
19 take full responsibility for that safety, for which  
20 Congress and the public holds us accountable, and  
21 rightfully so.

22 To that end, we re-affirm our commitment to  
23 carry out our mission as a Federal department in a safe,  
24 secure and environmentally responsible way; we re-affirm  
25 our dedication to providing reasonable assurance of

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1 adequate protection to public health and safety; we  
2 re-affirm our dedication to protecting the health and  
3 safety of our workers; and we re-affirm our  
4 determination to accept full responsibility for any and  
5 all outcomes of our efforts.

6 Clearly the Board provides valuable insight and  
7 advice, but ultimately, we, at DOE, cannot abdicate our  
8 own responsibility to manage the risks associated with  
9 our facilities and operations in an appropriate and  
10 conscientious fashion.

11 DOE line management must be held accountable,  
12 and we must have clear roles and responsibilities to  
13 ensure that this is the case. These are guiding  
14 principles ingrained in how we do work safely.  
15 Unfortunately, however, DOE has in the past, through  
16 action and inaction, blurred the distinction between the  
17 responsibility associated with our ownership of the  
18 nuclear complex and the roles of external advisors,  
19 including the DNFSB.

20 As a result, and as part of the Department's  
21 Regulatory Reform Initiative, we've converted an  
22 outdated 17-year-old Interface Manual into a DOE order  
23 to re-establish clear lines of responsibility and  
24 reinforce our respective roles: DOE as the owner and  
25 regulator, and DNFSB as the independent agency providing

15

1 advice, analysis, and recommendations to assist the  
2 Department in overseeing our defense nuclear facilities.

3 The DOE order, which the Department issued in  
4 May of this year, is consistent with governing  
5 legislation and does not hinder cooperation with the  
6 DNFSB or prevent the DNFSB from providing independent  
7 analysis, advice and recommendations to either the  
8 Secretary or others in the Department to ensure that we  
9 have adequate protection of public health and safety.

10 Since the issuance of the order, we have heard  
11 concerns from Board members, your staff, and from some  
12 Congressional staff, on what they perceive to be the  
13 order's view of the Board's jurisdiction. I'd like to  
14 address each of those major concerns now.

15 Regarding adequate protection of public health  
16 and safety, this is our primary point of interface, and  
17 should be the focus of our interactions. DOE Federal  
18 and contractor employees are especially and particularly  
19 trained to execute their work in and around the hazards  
20 posed by our mission. Their safety is the focus of our  
21 training programs, and multiple requirements established  
22 by governing directives, standards and procedures.

23 While we value your advice on these matters, and  
24 we truly do, this should never detract from our shared  
25 focus of protecting public health and safety.

16

1 Regarding activities involving transportation of  
2 nuclear materials, it is our view that the  
3 transportation activities for nuclear explosives and for  
4 nuclear materials outside DOE facilities are subject to  
5 other governing authorities. We agree that your  
6 oversight of movements of nuclear explosives and  
7 materials within the boundaries of defense nuclear  
8 facilities is wholly appropriate.

9 On the issue of access to draft or  
10 pre-decisional information, we do reserve the right to  
11 control information in the pre-decisional phase. It is  
12 an ineffective use of our resources to pursue interim  
13 staff positions that ultimately may not be relevant,  
14 interesting though they may be.

15 Further, it is necessary for us to work through  
16 an internal deliberative process to develop our own  
17 decisions prior to sharing them with others. This will  
18 ensure that our subject matter experts can freely offer  
19 ideas and conceptual solutions, as well as ensuring our  
20 accountability and ownership of the resulting decision.  
21 We will consider and share this information on a  
22 case-by-case basis, if we believe the information is  
23 mature enough to make the interaction valuable.

24 Finally, concerning oversight of Hazard Category  
25 3 Defense Nuclear Facilities, we note that in accordance

17

1 with the definition of Hazard Category 3, these  
 2 facilities do not pose a risk to the public. While we  
 3 welcome your review and comment to help ensure that  
 4 these facilities are properly categorized, as stated  
 5 earlier, this interaction should not detract from our  
 6 focus on facilities with higher hazard categorization,  
 7 which could pose a risk to public health and safety, and  
 8 should be our joint focus.

9 However, it is important to note that even prior  
 10 to the development and issuance of the Interface Order,  
 11 these very issues remain a matter of discussion between  
 12 the Department and the DNFSB in the context of governing  
 13 legislation and not any Department directive.

14 Looking to the future, here are some of the  
 15 things that the Secretary and I are committed to  
 16 carrying out within our Department: We will perform our  
 17 role as facility owner, operator and regulator, as well  
 18 as steward for the taxpayer in safely achieving the  
 19 missions the law mandates the Department to pursue; we  
 20 will cooperate closely with the DNFSB and provide  
 21 complete access to the information that you need to  
 22 carry out the Board's mission consistent with your  
 23 legislative mandate; we will proactively engage with the  
 24 DNFSB so that we fully understand the bases and  
 25 underlying analyses behind its advice or its draft

18

1 recommendations, including the safety benefits it sees  
 2 for Departmental operations at the Department's nuclear  
 3 facilities; we will formulate consolidated DOE positions  
 4 on policy, to include directives and standards prior to  
 5 the Board's staff engagement so that we can ultimately  
 6 speak with one consistent voice; and we will reinforce  
 7 with DOE line managers the expectation that they will  
 8 make sound technical decisions, drawing upon all  
 9 reasonably available information, including the advice  
 10 and observations from the DNFSB.

11 We believe that implementing these pledges,  
 12 consistent with the DOE order and the Board's  
 13 jurisdictional mission, will uniformly complement the  
 14 Board's advisory mission and the Department's safety  
 15 management responsibility for its defense nuclear  
 16 facilities.

17 Mr. Chairman and members of the Board, I want to  
 18 thank you again for inviting me here this morning. I  
 19 look forward to the comments and the conclusion of this  
 20 hearing, and I look forward to our future engagements.

21 MR. HAMILTON: Thank you, Mr. Brouillette. We  
 22 appreciate your taking the time to join us here today.  
 23 In order to allow Mr. Brouillette to depart, we will  
 24 take a 10-minute recess and we will adjourn or we will  
 25 reconvene by this clock at 35 minutes after the hour.

19

1 Thank you.  
 2 (Whereupon, there was a recess in the  
 3 proceedings.)

4 ACTING CHAIRMAN HAMILTON: At this time, I would  
 5 like to reconvene our hearing and continue by inviting  
 6 our panel of witnesses for session 2, including Mr. Matt  
 7 Moury, Associate Under Secretary for Environment,  
 8 Health, Safety and Security; and Mr. Ike White, Chief of  
 9 Staff and Associate Principal Deputy Administrator of  
 10 the NNSA; and Mr. Chris Roscetti, our Technical Director  
 11 here at the Board.

12 Messrs. Moury and White are here on behalf of  
 13 the Under Secretary of Energy and the Under Secretary  
 14 for Nuclear Security, respectively.

15 Does anyone on the panel wish to submit a  
 16 written statement?  
 17 (No response.)

18 ACTING CHAIRMAN HAMILTON: Not at this time.  
 19 Okay. The Board will ask questions of the panel  
 20 members. Other panelists may seek recognition by me to  
 21 supplement any answer as necessary. If any panelist  
 22 would like to take the question for the record, the  
 23 response will be entered into the record at a later  
 24 time.

25 We will begin with questions from Board members,

20

1 and I will start with the first question. Mr. Roscetti,  
 2 there have been prior attempts to issue an Interface  
 3 Order to replace the Departmental Interface Manual that  
 4 were undertaken in the past decade. Could you briefly  
 5 describe what these efforts were to your knowledge?

6 MR. ROSCETTI: Yes, sir. On two separate  
 7 occasions, the Department attempted to revise its Manual  
 8 140, the directive that preceded the recently approved  
 9 Order 140.1. In 2007, the Department embarked on what  
 10 was called the Office of Health, Safety and Security  
 11 Directives Review, or HHS Directives Review. Manual  
 12 140.1 was part of phase 2 of this effort.

13 In July 2009, the Board's staff members reviewed  
 14 a draft of the Department's draft Order 140.1. The HHS  
 15 Directives Review was subsumed by the Department's 2010  
 16 Safety and Security Reform. The Office of Health,  
 17 Safety and Security also led the 2010 Safety and  
 18 Security Reform. Again, the staff reviewed a draft, but  
 19 those drafts were never finalized and issued.

20 Consequently, the Interface Manual continued to  
 21 govern the Department's interface with the Board until  
 22 May 2018. For the 2011 effort, the Department's  
 23 Justification Memo noted that the conversion was called  
 24 for by the Departmental direction requiring conversion  
 25 of manuals to orders during their normal review cycle.

21

1 The Justification Memo for the 2011 effort noted  
2 that the major changes were to provide more concise  
3 goals and requirements, and to condense the sections on  
4 interactions between the Department and the Board. No  
5 other explicit changes beyond converting and  
6 streamlining the content of the Interface Manual were  
7 identified in the Justification Memo.

8 The Board's staff review of the previous draft  
9 orders indicate that the general intent of the 2011  
10 Justification Memo to convert and streamline the  
11 Interface Manual was carried out in the previous drafts  
12 from 2009 to 2011. The previous drafts did not include  
13 significant changes in interface expectations, changes  
14 to the scope of the Board's oversight, or changes to  
15 access to information, personnel or facilities.

16 In a memo dated September 25th, 2017, and in  
17 response to direction from the Deputy Secretary, the  
18 Department's Office of Management requested an  
19 evaluation of the Interface Manual. In May 2018, the  
20 new Interface Order was issued with major changes from  
21 the Interface Manual.

22 I request Exhibit 5 to be entered into the  
23 record, which summarizes the staff's view of the major  
24 changes. These changes will be discussed during the  
25 course of the hearing, and include the Department's new

22

1 definition of "public health and safety" to include only  
2 individuals beyond the site boundaries; the Department's  
3 new restriction on access to information for Hazard  
4 Category 3 in radiological defense nuclear facilities;  
5 the Department's new restrictions on access to  
6 deliberative documents, pre-decisional documents or  
7 deliberative meetings; the Department's new requirements  
8 for contractors to refer all requests for information or  
9 access related to defense nuclear facilities to a  
10 Departmental site liaison for determinations regarding  
11 response and to only respond when formally tasked by the  
12 Departmental site liaison.

13 ACTING CHAIRMAN HAMILTON: Thank you,  
14 Mr. Roscetti.

15 Mr. Moury, could you discuss for us the goals,  
16 objectives and intended improvements that drove the need  
17 for the changes from the prior Interface Manual to this  
18 order?

19 MR. MOURY: Thank you, Mr. Chairman.  
20 Mr. Chairman, members of the Board, it's a great honor  
21 to be here to represent the Under Secretary, so thank  
22 you for inviting me.

23 I don't think I can add a whole lot to what the  
24 Deputy Secretary has already read, but we are blessed  
25 with having Captain Crawford here, one of the original

23

1 Board members, and there are three general themes, I  
2 think, that he always emphasized when I was a member of  
3 the Defense Board member staff. As you all know, I was  
4 with the staff for about 18 years before I went over to  
5 the Department of Energy, first in the Office of  
6 Environmental Management as a deputy assistant  
7 secretary, and now in my current position, and one of  
8 the major themes that he always emphasized that I have  
9 always carried with me is clear roles and  
10 responsibilities and line management's responsibility  
11 for safety, very consistent with our guiding principles  
12 for integrated safety management.

13 The second one that we always talked about was  
14 the need to institutionalize processes. And that was  
15 always a common complaint whenever we were reviewing  
16 Department programs and found them devoid of process.  
17 So the order also puts a very formal process in place  
18 for how we deal with Board recommendations, especially  
19 the new ones related to draft recommendations, and  
20 requests for documentation, et cetera.

21 And then, finally, probably one of the most  
22 significant themes that he always emphasized was that  
23 the Department needed to be a demanding customer with  
24 their contractors. So it's very important, as you've  
25 read through the order, that we require -- the Defense

24

1 Board, or we ask the Defense Board to interface with the  
2 Department of Energy, because the contractors work for  
3 the Department of Energy. And we would be the ones that  
4 need to be aware of what work is going on, what they're  
5 providing Defense Board, and the discussions that are  
6 going on.

7 So those are some of the themes, I think, that  
8 are very important that are carried into this order to  
9 make it a more structured order than the existing  
10 manual, which, by the way, was 17 years old, no longer  
11 compliant with the Board's statute, and really needed to  
12 be updated. Thank you.

13 ACTING CHAIRMAN HAMILTON: Let me follow on.  
14 Thank you, Mr. Moury. Let me follow on with the second  
15 part here. The Deputy Secretary issued a  
16 Department-wide memorandum October 13th, 2017, which I  
17 will request be entered into the record as Exhibit 4.  
18 The memorandum discussed his intention to continue a  
19 strong and productive relationship with the Board, which  
20 is great, but how does this order do that?

21 MR. MOURY: Well, personally, and I think you'll  
22 hear from my colleague Mr. White when he talks about  
23 NNSA and their interactions with the Defense Board, but  
24 I think all it does is just structures many of the  
25 existing programs that we have in place with the Defense

25

1 Board. Requests for documentation, it still follows the  
2 same process, requesting of a -- requests for  
3 information, so on and so forth.

4 I don't -- I don't see it as a significant  
5 change in how we are going to interact with the Defense  
6 Board, and I think it's important as we move through in  
7 this discussion and as you continue with your  
8 questioning, that Mr. White has the opportunity to talk  
9 to you about how at least on the NNSA side, they have  
10 planned to interact at the site level with your site  
11 resident inspectors.

12 ACTING CHAIRMAN HAMILTON: Let me ask Mr. White  
13 right now, then, do you have anything to add to that  
14 that you could share with us right now? Specifically  
15 how this improves the relationship between the Board and  
16 the Department?

17 MR. WHITE: Well, I mean, my perspective is the  
18 order itself is intended to continue our relationship,  
19 right? It certainly is not intended to harm that  
20 relationship. The primary points from my point of view  
21 are mostly about roles and responsibilities on our side  
22 and about ensuring that our folks have ownership and  
23 accountability for decisions they make, but it's  
24 certainly not intended to have a negative impact on the  
25 relationship between us and the Defense Board.

26

1 ACTING CHAIRMAN HAMILTON: Thank you.  
2 Mr. Santos?

3 MR. SANTOS: Thank you, Acting Chairman.  
4 Mr. Moury, we understand that the development of  
5 this order followed the Integrated Project Team process.  
6 I have a series of questions regarding the Integrated  
7 Project Team for this Order 140.1. I ask you to please  
8 provide simple yes or no answers in order to save some  
9 time.

10 First question, did the Integrated Project Team  
11 include any member from the Defense Nuclear Facilities  
12 Safety Board?

13 MR. MOURY: No, it did not.

14 MR. SANTOS: Okay. Second question --

15 MR. MOURY: Let me just add one thing, and with  
16 your permission, Mr. Chairman, I would like to submit a  
17 copy of DOE Order 251.1, which contains the process for  
18 the Integrated Project Team.

19 MS. BLAINE: Mr. Chairman, we will mark that as  
20 DOE Exhibit 1.

21 ACTING CHAIRMAN HAMILTON: Thank you.

22 MR. SANTOS: Did the Integrated Project Team  
23 include any member from local governments from the  
24 communities that live near defense nuclear facilities?

25 MR. MOURY: Not that I'm aware of.

27

1 MR. SANTOS: Did the Integrated Project Team  
2 include any member from worker unions?

3 MR. MOURY: Not that I'm aware of.

4 MR. SANTOS: Did the Integrated Project Team  
5 include any member from the public?

6 MR. MOURY: Not that I'm aware of, no.

7 MR. SANTOS: Did the Integrated Project Team  
8 include any member from contractor organizations that  
9 operate defense nuclear facilities that are subject to  
10 DNFSB oversight?

11 MR. MOURY: Not that I'm aware of.

12 MR. SANTOS: Okay.

13 MR. MOURY: Mr. Santos, I think it's important  
14 to realize that we were creating an internal document  
15 for the Department of Energy that lays out roles and  
16 responsibilities for the Department, and as such, it was  
17 considered an inherently Governmental process, which is  
18 why many of those people that you mentioned are not on  
19 the team and are not on our teams whenever we develop  
20 DOE orders.

21 MR. SANTOS: I think, Ms. Roberson, you want to  
22 follow up or you want me to? Go ahead.

23 MS. ROBERSON: I was going to suggest that we  
24 take for the record to confirm who was on the team. And  
25 that goes with that last question.

28

1 MR. MOURY: We will provide all the members of  
2 the team.

3 MS. ROBERSON: Thank you.

4 MR. SANTOS: I was going to go to a document in  
5 our booklet. We have here a memo dated September 25th,  
6 2017 that I would like to submit for the record.

7 Mr. Chairman?

8 ACTING CHAIRMAN HAMILTON: So granted. Please  
9 read the subject in the subject line.

10 MR. SANTOS: Subject line: "Request to conduct  
11 evaluation of DOE Manual 140.1: Interface with the  
12 Defense Nuclear Facilities Safety Board, and provide a  
13 proposed change to the manual into an order."

14 I would like to note that from that memo that  
15 there are several members from contractor organizations  
16 and I would like to ask Mr. Moury to reconfirm the  
17 participation -- could you please provide for the record  
18 the recommendations the contractor organizations gave to  
19 the Department of Energy regarding the content of Order  
20 140.1?

21 MR. MOURY: That will be submitted for the  
22 record, with the Chairman's permission.

23 ACTING CHAIRMAN HAMILTON: So granted.

24 MR. SANTOS: Thank you.

25 ACTING CHAIRMAN HAMILTON: The chair recognizes



29

1 Ms. Connery.

2 MS. CONNERY: So, along those lines, Mr. Moury,  
3 you submitted for the record DOE Order 251.1(d). That  
4 order requires, and I quote, "transmission of draft  
5 directives, invoke standards and other relevant approved  
6 documents through the DOE Department representation to  
7 the Defense Nuclear Facilities Safety Board for  
8 directives of interest to the Board."

9 Was the draft Interface Order formally  
10 transmitted to the Board as required? If not formally  
11 transmitted as required, why wasn't it formally  
12 transmitted?

13 MR. MOURY: I believe it was provided to the  
14 Defense Board, the details of that I will have to  
15 provide for the record.

16 MS. CONNERY: I do not believe that it was  
17 provided formally.

18 Mr. Chairman, would you care to comment?

19 ACTING CHAIRMAN HAMILTON: To my knowledge, the  
20 only exchange between the Board and the Department of  
21 Energy was an email exchange that I had with the  
22 Administrator of the NNSA which clearly noted, and I  
23 will submit this for the record, this email, that is  
24 dated May 7th, and I want to read the second sentence  
25 here, second and third sentences, just to be clear.

30

1 "The informal suggestions for consideration that  
2 I have collected below do not represent an official act  
3 or viewpoint of the Board. The Board reserves the right  
4 to comment on this order either before or after its  
5 issuance."

6 So the short version of the answer, as I know  
7 it, is that there was never any formal exchange, there  
8 was only this one email that I sent to Administrator  
9 Gordon-Hagerty that was warning her that there were  
10 things that we didn't think were appropriate in this  
11 order. That's my only knowledge. Do you know of  
12 anything else?

13 MR. MOURY: I do not, but I will confirm with  
14 the IPT and the Directives Review Board and then provide  
15 that response for the record.

16 ACTING CHAIRMAN HAMILTON: Thank you.

17 MS. CONNERY: So along those lines, the IPT, the  
18 Integrated Project Team process, seems to bypass the  
19 Board in terms of having us look at any input or  
20 development to directives or revisions. In particular,  
21 obviously, 140.1, which is the interface document, but  
22 also we've noticed the same thing on 10 CFR 830, which  
23 is the Federal Rule on Nuclear Safety Management; 420.1,  
24 the Order on Facilities Safety. So I want to understand  
25 if it's the Department's intent to limit the Board's

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1 access and input on development of directives.

2 MR. MOURY: No. As noted in the Board's own  
3 policy statements on their review of directives, you're  
4 allowed to look at directives whenever requested.  
5 Whenever you request to look at those directives, the  
6 intent of the IPT is not to restrict the Board from  
7 looking at them. Going back to the Deputy Secretary's  
8 statement, his only request is that we be allowed to  
9 provide a consolidated position so that we are speaking  
10 with one voice as a department.

11 MS. CONNERY: So after the Department's  
12 concluded its work, has a document that is ready to  
13 submit then after the decision has been made, you'll  
14 submit it to the Board only upon request for comment?  
15 Is that how I understand that?

16 MR. MOURY: If you request the document,  
17 consistent with our requests for information and  
18 consistent with the process that we've been following  
19 for the last 20 years, that's the way the document would  
20 be provided to the Board.

21 MS. CONNERY: So your staff is not required or  
22 instructed to provide any documents to the Board that  
23 may be of interest to the Board unless the Board  
24 requests it and knows that such a document is under  
25 review?

32

1 MR. MOURY: Well, since your policy statement  
2 was issued, we have provided some documents that the  
3 Board has elected not to review, and I can provide that  
4 information for the record. I don't have it off the top  
5 of my head.

6 So our position right now is that if you would  
7 like to review the document, please request that  
8 document and we will provide it. There is no intent to  
9 prevent you from seeing that document.

10 As far as 830 goes, we have a letter from the  
11 Chairman that says that you will comment on 830 as part  
12 of our Notice of Public Rulemaking Process, and we just  
13 recently had that Notice of Public Rulemaking released,  
14 the document is out for public comment, and we are  
15 looking forward to having the Board's comments and their  
16 positions on the rule.

17 MS. CONNERY: I would note that we submitted  
18 that letter after the document was in its final form  
19 ready to go to the Federal Register, that's when we sent  
20 the letter saying we would comment on the public comment  
21 process.

22 MR. MOURY: I am going to refrain talking about  
23 10 CFR 830 since this is not a public meeting on 830,  
24 and if we want to have a subsequent discussion on 830,  
25 we would be happy to do that.

1 MS. CONNERY: I look forward to that. So one  
 2 last question along this line, Mr. Moury, the central  
 3 technical authorities, who have responsibility for  
 4 nuclear safety execution in the field, and you quoted  
 5 Captain Crawford specifically on that matter, they  
 6 normally review documents that potentially impact  
 7 nuclear safety. Can you discuss why the central  
 8 technical authorities -- whether or not they were  
 9 involved in the development of this order, and if they  
 10 weren't, why not?

11 MR. MOURY: I believe all our significant  
 12 program offices with central technical authorities were  
 13 engaged in the development of the new order. I can have  
 14 Mr. White confirm on the NNSA side whether their central  
 15 technical authority was engaged, but I believe they were  
 16 all a part of this process.

17 MR. WHITE: I'm happy to respond.

18 MS. CONNERY: Sure.

19 MR. WHITE: For NNSA, our Central Technical  
 20 Authority's Office led our participation in the order  
 21 revision.

22 MS. CONNERY: Thank you.

23 ACTING CHAIRMAN HAMILTON: This question will be  
 24 addressed to both of you, Mr. Moury first, and then to  
 25 Mr. White. The Board's legislation states that the

1 Secretary will provide, and I quote, "ready access to  
 2 such facilities, personnel and information as the Board  
 3 considers necessary to carry out its responsibilities."  
 4 This access was specifically afforded to the previous  
 5 DOE Interface Manual; however, the new order does not  
 6 include this language. Instead, it says, "Provide the  
 7 DNFSB with ready access to such facilities, personnel  
 8 and information as necessary to carry out its statutory  
 9 responsibilities."

10 In other words, the order deletes the statutory  
 11 phrase "as the Board considers necessary." Mr. Moury,  
 12 could you discuss the basis for not including that  
 13 statutory language in the new order? Specifically why  
 14 you deleted the phrase "as the Board considers  
 15 necessary." And, Mr. White, I'll ask you the same  
 16 question.

17 MR. MOURY: As I'm reading the statute, under  
 18 Responsibilities of the Secretary of Energy, it says,  
 19 "the Secretary of Energy shall fully cooperate with the  
 20 Board and provide the Board with ready access to such  
 21 facilities, personnel and information as the Board  
 22 considers necessary to carry out its responsibilities  
 23 under this subchapter." DOE 140 still allows that to  
 24 occur.

25 I'm a little confused on why you -- if you could

1 rephrase your question again on exactly what --

2 ACTING CHAIRMAN HAMILTON: Let me be a little  
 3 bit more specific, then. In your order, the access to  
 4 information phrase ends with "to carry out its  
 5 responsibilities," and you've deleted the phrase "as the  
 6 Board considers necessary." So in other words, the  
 7 statute very specifically gives the authority to decide  
 8 what is necessary to the Board. The Board has the  
 9 authority to decide. That language in the order has  
 10 been diluted so that it says -- so that it says simply  
 11 "statutory responsibilities." Why did you dilute that  
 12 phrase?

13 MR. MOURY: Well, the statute also allows the  
 14 Secretary to deny access to certain information as well.  
 15 So when we look at the statute for what the Secretary --  
 16 or look at the order for what the statute -- or what the  
 17 Secretary will provide to the Board, "cooperate with  
 18 Defense Board, provide the Defense Board with ready  
 19 access to facilities, personnel and information  
 20 necessary to carry out its statutory authorities to  
 21 include and provide access to," and the first group is  
 22 those things that will be provided just carte blanche,  
 23 automatically, to the Defense Board.

24 The part that I think you are referring to is  
 25 where the Secretary may deny access as allowed by the

1 statute, and those areas are subject to discussions,  
 2 which was occurring even before DOE 140 was published,  
 3 but the restrictions that the Secretary has, as allowed  
 4 by the statute, the person requesting the information  
 5 does not need such access in connection with his or her  
 6 duties, and then requests are pre-decisional, which the  
 7 Secretary, or Deputy Secretary, talked about in his  
 8 comments.

9 So there are two elements to this piece of  
 10 information that the Board may be requesting. The first  
 11 piece being that information readily accessible,  
 12 completed documents that will be provided to the Defense  
 13 Board whenever they provide a Request for Information.  
 14 No change to that. That's as determined by the Defense  
 15 Board.

16 The second piece is the pre-decisional piece  
 17 that you may get some pushback and discussion to  
 18 understand exactly how it is going to be fulfilling the  
 19 Board's mission.

20 ACTING CHAIRMAN HAMILTON: Mr. White, do you  
 21 have anything to add? If not, that's okay. Just to  
 22 give you a chance to talk.

23 MR. WHITE: A couple of things. One is I'm not  
 24 sure the statutory distinction wording in the order  
 25 versus what we ended up with in terms of the new version

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1 of the order, but I would point out that from NNSA's  
2 perspective, I led a training session for our field  
3 office managers, for our plants, for our laboratories,  
4 for our points of contact, to make sure that it was  
5 clear to them that the -- for NNSA, that we intended to  
6 continue to provide the Board and its staff with ready  
7 access to all of our nuclear facilities.

8 So the current unescorted access that your  
9 resident inspectors have at all of our sites is to  
10 continue just as it has. This order has no change in  
11 that regard. We will continue to respond to requests  
12 from you for information related to all of our defense  
13 nuclear facilities, just as we have in the past. This  
14 order for us does not change that.

15 The discussion we had earlier on draft and  
16 deliberative information, that discussion is actually in  
17 the old order as well as in the new order, and that is  
18 not -- that's not really -- for us it's an emphasis  
19 point for ability and responsibility for, but it's not a  
20 change in the way we have historically operated.

21 The first 13 years I spent on the Board staff  
22 and four years of that as a Resident Inspector, we  
23 routinely had conversations with the Department on draft  
24 and pre-decisional information, and I expected those  
25 under the previous order, I expect those conversations

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1 to occur under the new order. So I don't see a change.

2 ACTING CHAIRMAN HAMILTON: Thank you, Mr. White.

3 I am less concerned with that kind of gray area  
4 about internal DOE deliberations. I think reasonable  
5 people could agree to disagree on how you carve that up.  
6 I'm not arguing that, but just for the record, my  
7 concern is that you've -- it appears that by taking out  
8 the phrase "the Board considers necessary," there has  
9 been a subtle attempt to say that the Board doesn't get  
10 to decide. In fact, the statutory language specifically  
11 says, "the Board considers necessary." That's my point.  
12 We don't need to beat it anymore.

13 I do want to ask Mr. Roscetti, do you have any  
14 examples since the issuance of the order -- excuse me,  
15 since the issuance of the order, that the staff has  
16 encountered any difficulty assessing information?

17 MR. ROSCETTI: Mr. Chairman, the Department is  
18 still implementing the new order, which includes  
19 updating contracts for its management and operating  
20 contractors. Although the order is not fully  
21 implemented, the staff has observed increased  
22 difficulties in obtaining information from the  
23 Department. For several documents, we have observed  
24 protracted response times as the management and  
25 operating contractors consider their responsibilities to

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1 provide the requested information based on the language  
2 in the new order.

3 In most cases, the Department personnel  
4 eventually overturned the contractor's decisions;  
5 however, let me provide you with four specific examples  
6 where the Department has not provided information or  
7 access that the staff requested. I request Exhibit 6 be  
8 entered into the record.

9 As noted in Exhibit 6, the staff has encountered  
10 difficulties with access to documents needed to  
11 determine the veracity of a worker complaint related to  
12 safety at Los Alamos National Laboratory; documents  
13 related to safety challenges of transitioning to  
14 shiftwork at the Los Alamos Plutonium Facility;  
15 deliberations during nuclear explosive safety studies at  
16 the Pantex Plant; and technical basis documents from Los  
17 Alamos National Laboratory related to the redefinition  
18 of high explosive violent reaction.

19 ACTING CHAIRMAN HAMILTON: Thank you,  
20 Mr. Roscetti.

21 The chair recognizes Board member Roberson.

22 MS. ROBERSON: Thank you, Mr. Chairman, and  
23 thank the panel. I haven't had the opportunity to do  
24 that yet.

25 First of all, and I appreciate very much the

40

1 Deputy Secretary as well as the three of you  
2 participating in this hearing.

3 A couple of things I wanted to say leading into  
4 the line of questioning is, to emphasize, and I don't  
5 want there to be any confusion, the Board understands  
6 line accountability, and it understands the Department  
7 is responsible for its operations. The Board hopes the  
8 Department doesn't see the Board as competitive, but  
9 complementary to ensuring safety. That's what our  
10 mission requires, and that's how we're focused.

11 So the line of questions we're asking is not to  
12 challenge your authority in executing accountability,  
13 but to try to understand your intended impact to  
14 oversight of those functions and safety.

15 So my first question is, the order uses the term  
16 "public health and safety," which is a key term in our  
17 legislation, under the Atomic Energy Act. In  
18 particular, the term applies for Board recommendations,  
19 and I quote, "As the Board determines they are necessary  
20 to ensure adequate protection of public health and  
21 safety." However, DOE included a new definition in the  
22 order of "public health and safety," and I quote,  
23 "Health and safety of individuals located beyond the  
24 site boundaries of DOE sites with DOE defense nuclear  
25 facilities." I am not aware that our legislation or

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1 other parts of the Atomic Energy Act refers to the site  
2 boundary as the demarcation for defining public health  
3 and safety.

4 So my first question, Mr. Moury, is, can you  
5 help us understand the origin of this definition for  
6 "public health and safety," as the concept is  
7 incorporated in your order?

8 MR. MOURY: Well, clearly, we don't have any  
9 attorneys up here, but I will do my best to answer your  
10 question, Ms. Roberson. We have never defined  
11 collocated workers as members of the public. 10 C.F.R.  
12 835 on Occupational Radiation Protection that was  
13 published in 1993, defines a member of the public as an  
14 individual who is not a general employee. We treat the  
15 public differently on legal limits for radiation  
16 exposure, but we also train our collocated workers, as  
17 was mentioned earlier, on the risks they are exposed to,  
18 and emergency response procedures.

19 This definition is also consistent with the  
20 definition in the DNFSB Technical Report 20 on  
21 collocated workers, written by former Board Member  
22 Dr. Kouts, with assistance from Mr. DiNunno, that  
23 defines "collocated workers" as "individuals who are  
24 employees of DOE or one of DOE's operating contractors,  
25 or mission-related subcontractors, at the nuclear site

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1 where the facility in question is located, but who  
2 spends little if any of their time in the facility."

3 That doesn't mean because we don't categorize  
4 them as public that we don't protect them. We have a  
5 robust series of enforceable rules, directives,  
6 standards, framed around integrated safety management,  
7 including 10 C.F.R. 835, I just mentioned; 10 C.F.R. 851  
8 on worker health and safety programs; 10 C.F.R. 830 on  
9 nuclear safety, just to name a few that we use to ensure  
10 the protection of the collocated workers that are inside  
11 the fence boundary.

12 MS. ROBERSON: So thank you for that. Once  
13 again, the Board is not challenging how the Department  
14 chooses to execute its line authority, but are really  
15 focused on how the language in the order affects the  
16 ability to do independent oversight. And I think on  
17 Tech-20, there may be some disagreement as to what it  
18 concludes and what information it presents, but I think  
19 we're going to talk about that later, so I don't need to  
20 go to that.

21 I have one last question on this topic. Is it  
22 the Secretary of Energy's position that facility workers  
23 and collocated workers, and, indeed, anyone present at a  
24 defense nuclear facility site, are excluded from the  
25 adequate protection standard of the Atomic Energy Act?

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1 MR. WHITE: Do you mind if I answer that one?

2 MS. ROBERSON: I would be honored.

3 MR. WHITE: Thank you, Jessie.

4 The Department is committed to adequate  
5 protection of all of its workforce, all of the folks who  
6 are at our sites, and all of the members of the public.

7 MS. ROBERSON: Okay, Mr. White, you didn't  
8 actually answer that question.

9 MR. WHITE: What was the question?

10 MS. ROBERSON: You definitely added fruit to the  
11 conversation, but --

12 MR. WHITE: Yes. I mean, we're definitely  
13 committed to adequate protection of our workforce, we're  
14 committed to adequate protection of all of the folks  
15 located on our sites and we are committed to adequate  
16 protection of the public.

17 MS. ROBERSON: That answers the question. Thank  
18 you very much.

19 MR. WHITE: Yes.

20 ACTING CHAIRMAN HAMILTON: Ms. Roberson, I would  
21 like to add one clarifying question to your line of  
22 inquiry, if I may. I heard all your references to  
23 previous documents, Tech-20, Code of Federal  
24 Regulations. My question, the thing that I did not  
25 hear, was is there anything in the Atomic Energy Act

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1 that defines "public health and safety" as being  
2 restricted to outside the site boundary? And I think  
3 that can be a yes or no question.

4 MR. MOURY: I think it only refers to whether  
5 they are an employee of the organization or not an  
6 employee of the organization.

7 ACTING CHAIRMAN HAMILTON: Okay. I'm not sure  
8 that that helps me, but I'll stop there.

9 MS. ROBERSON: Thank you, Mr. Chairman.

10 ACTING CHAIRMAN HAMILTON: New topic, we would  
11 like to talk about hazard categories. The order states  
12 that it does not apply to DOE Nuclear Hazard Category 3  
13 or below Hazard Category 3 facilities. Now, as I read  
14 the order, and it's a little bit confusing to me when it  
15 says "excluded," because a clear reading of that order  
16 would say that those are outside this order, but I think  
17 the way that the order is written is that the Defense  
18 Nuclear Facilities Safety Board is excluded from DOE  
19 Nuclear Hazard Category 3 and below Hazard Category 3  
20 facilities.

21 I note that the hazard category definition of  
22 the defense nuclear facilities is not addressed in the  
23 Atomic Energy Act. It is also a Department construct.

24 So, Mr. Moury, could you explain to me the basis  
25 for limiting Board oversight to only Hazard Category 1

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1 and 2 nuclear facilities? And I'm specifically looking  
 2 for the statutory basis for that.  
 3 MR. MOURY: Well, the hazard category taxonomy  
 4 is a risk-based taxonomy, so it allows us to prioritize  
 5 our resources on the highest risk activities, which in  
 6 this case are Hazard Category 2 and Hazard Category 1  
 7 facilities as you mentioned. That does not mean --  
 8 well, let me back up one step and say, you know,  
 9 restriction of the Board is not in the order. This  
 10 order is for defining the roles and responsibilities of  
 11 the -- the roles and responsibilities of DOE and its  
 12 contractors.  
 13 So saying that it's restricting the Defense  
 14 Board is not -- if that's confusing, I apologize. But  
 15 as far as access to Hazard Category 3 facilities, as  
 16 Mr. White talked about earlier, that you still have  
 17 access to Hazard Category 3 facilities. You still have  
 18 information on categorization of those Hazard Category 3  
 19 facilities. If there's any question that we categorize  
 20 them correctly or not, you have access to that  
 21 information. If you request documents on Hazard  
 22 Category 3 facilities, if they're available, they will  
 23 be readily provided.  
 24 What the Board chooses to do with those  
 25 documents is up to the Board, but we are always open, as

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1 a learning organization, to any comments that you may  
 2 have, any concerns you may have, any safety issues that  
 3 you may have relative to those Hazard Category 3  
 4 facilities.  
 5 ACTING CHAIRMAN HAMILTON: Thank you. I want to  
 6 be really clear, because the -- let's take a look at the  
 7 order. "Order 140.1, Paragraph 3(c), Exemptions and  
 8 Exceptions: Equivalencies and exceptions to this order  
 9 are processed in accordance with" ... some other order  
 10 ... "251.1, current version," and then it lists  
 11 exemptions. And it lists exemptions that are in the  
 12 statute.  
 13 For example, the very first one is, "the order  
 14 does not apply to Naval Reactors Programs." That's  
 15 right in the statute. And I get that. So, in other  
 16 words, as the Board, we don't have jurisdiction over the  
 17 Naval Reactors Programs. Clear as a bell in the  
 18 statute.  
 19 But the second one says, "This order does not  
 20 apply to DOE Nuclear Hazard Category 3 or below Hazard  
 21 Category 3 facilities." And it goes on to talk about  
 22 how we will be provided access to information that led  
 23 to the determination that it was a hazard -- that it was  
 24 less than Hazard Category 2.  
 25 So does the order -- does this exemption mean

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1 that I don't have access, my Board, my agency does not  
 2 have access to Hazard Category 3 and below? Is that  
 3 what this exemption means?  
 4 MR. MOURY: No. It gets back to our discussion  
 5 we had earlier about public health and safety. By  
 6 definition, by our 1027 standard on hazard  
 7 categorization, Hazard Category 3 facilities only have  
 8 localized effects. There is no public health and safety  
 9 effects associated with Hazard Category 3 facilities.  
 10 That is what the -- that terminology is in there for.  
 11 Mr. White has something that he would like to  
 12 add.  
 13 ACTING CHAIRMAN HAMILTON: Yeah, I'm going to  
 14 let you talk, but let me just close on this, because I  
 15 think this is really crucial that we understand each  
 16 other. You, Department of Energy, are defining a  
 17 construct, hazard categories. That's not in the Atomic  
 18 Energy Act. The Atomic Energy Act doesn't speak to  
 19 those hazard categories.  
 20 So you're defining hazard categories, and then  
 21 you're saying, in these categories, there's no --  
 22 there's no detriment -- potential detriment to the  
 23 adequate protection of the public health and safety, so  
 24 I don't have the right to look at it. So you're making  
 25 the determination of what I can look at and what I

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1 can't. I've got to understand that.  
 2 MR. MOURY: No, I understand your question  
 3 exactly.  
 4 ACTING CHAIRMAN HAMILTON: Go ahead.  
 5 MR. MOURY: So if you have some question about  
 6 that Hazard Category 3 facility and you think it does  
 7 have an impact on public health and safety, please, look  
 8 at that facility. Request those documents. Confirm  
 9 that we have made that characterization correctly. If  
 10 we have not, and it is a Hazard Category 2 facility,  
 11 then we need to elevate the hazard categorization of  
 12 that facility.  
 13 ACTING CHAIRMAN HAMILTON: Let Mr. White, I know  
 14 you wanted to chime in on this.  
 15 MR. WHITE: It's important to understand that in  
 16 the construct of how these orders are put together,  
 17 those exemptions apply to department personnel and its  
 18 contractors relative to a minimum set of requirements.  
 19 So orders establish a minimum set of things that we are  
 20 required to do.  
 21 An exemption simply means that the Department's  
 22 employees and contractors don't necessarily have to do  
 23 the things in the order if the exemption otherwise would  
 24 apply. The order does not pertain to what you may or  
 25 may not choose to do, it doesn't govern the operations

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1 of the Board or its staff, it doesn't prevent our  
2 employees or our contractors from doing anything that  
3 they think is in the best interest of the Department and  
4 of the Government, except in cases where it explicitly  
5 does that.

6 And certainly when I -- like I said earlier,  
7 when I trained our folks, I mean, I had a  
8 videoconference with all of our field office managers,  
9 our plant and our laboratory leadership, and all of our  
10 POCs who have to implement this order, and I made it  
11 very clear to them that that exemption and that language  
12 was not intended to deny you access to Hazard Category 3  
13 facilities, nor was it intended to be reason we would  
14 not provide you, upon request, information associated  
15 with the operation of our Hazard Category 3 facilities.  
16 And if you see any evidence of that occurring, please  
17 bring that to my attention and I will correct it.

18 ACTING CHAIRMAN HAMILTON: Thank you. So, by  
19 definition, I know that the Radiological Laboratory  
20 Utilities and Office Building, commonly referred to as  
21 the RLUOB, at Los Alamos is a Hazard Category 3 or  
22 below. Do we have access to the RLUOB?

23 MR. WHITE: If your Resident Inspector would  
24 like unescorted access to RLUOB, there's no reason he  
25 should not have access. So if that's occurring --

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1 ACTING CHAIRMAN HAMILTON: So what I am taking  
2 from this, then, is that the Department is not trying to  
3 restrict our access to Category 3 and below, and if  
4 that's the case, I would offer for your consideration  
5 that when I read this document and exemptions list, that  
6 along with things that are statutorily off limits to us,  
7 like the Naval Reactors Programs, or offsite  
8 transportation, there's a whole -- eight of them here.  
9 The safety of atomic weapons. Some of those are  
10 statutorily off limits to us, and I get it. But that  
11 one is not, and yet it's in the same pile. So it's very  
12 confusing the way I read it. That's just a statement I  
13 wanted to make.

14 I'm going to call on Board Member Santos first  
15 and then Board Member Connery. Mr. Santos?

16 MR. SANTOS: Thank you, Acting Chairman. I'm  
17 very confused. So I have a question. Do you consider  
18 then the Board and its staff need to even follow your  
19 risk-based construct of hazard categorization? Do you  
20 feel that that's a requirement for the Board and its  
21 staff to comply with?

22 MR. MOURY: We established no requirements for  
23 the Board. If you don't want to follow it, then you  
24 don't have to follow it.

25 MR. SANTOS: So we don't even have to entertain

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1 a debate on whether what categorization of a facility it  
2 is, whether it's three, two or one, that's not relevant  
3 for the Board's independent oversight. Is that correct?

4 MR. MOURY: If there's no access -- if there is  
5 no impact on public health and safety, and you're  
6 requesting a significant review at a Hazard Category 3  
7 facility that's going to take significant resources out  
8 of the Department of Energy, I think that's a topic that  
9 requires discussion. We've had those discussions in the  
10 past.

11 MR. SANTOS: Um-hmm. Thank you.

12 ACTING CHAIRMAN HAMILTON: The chair recognizes  
13 Ms. Connery.

14 MS. CONNERY: So, Mr. White, I appreciate the  
15 fact that you are out there training your staff to say  
16 this doesn't mean that we don't have access to these  
17 facilities, but, again, the training seems to contradict  
18 what's in the order, so I would suggest that perhaps you  
19 align the order with how you're going to implement, if  
20 you're saying this implementation isn't going to be as  
21 benign as it seems to be.

22 And, Mr. Moury, what you're suggesting, if I  
23 understand it, it took a long time to get there, is that  
24 you put forward your categorizations because that's your  
25 risk-based assessment as to where you're going to apply

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1 your resources. The Board can apply its resources  
2 wherever it wants, can go into these facilities if it  
3 wants to, but the Department will not entertain, without  
4 significant debate, any activities that would cause the  
5 contractor to have to provide information to us that  
6 they feel is in excess, or that the Department feels in  
7 excess, or would not necessarily need to respond to  
8 either a reporting requirement or a recommendation by  
9 the Board if you don't feel that it impacts the public  
10 health and safety by your definition. Is that my  
11 understanding?

12 MR. MOURY: I think that's an accurate  
13 representation. Thank you.

14 ACTING CHAIRMAN HAMILTON: Mr. Santos?

15 MR. SANTOS: Thank you, acting Chairman.

16 I have a question for Mr. Roscetti. If you can  
17 pull out some of the examples that you were -- thank  
18 you. Exhibit 6. In your view, were any of these  
19 examples, the difficulty arose due to the DOE's view  
20 that none of these issues impacted public health or  
21 safety or that they were associated with some other type  
22 of hazard categorization? Can you explain some more  
23 details of the rationale provided by DOE for providing  
24 the difficulty in accessing the information?

25 MR. ROSCETTI: So let me repeat the question so

1 I understand it to be able to answer it.  
 2 MR. SANTOS: Yes. Um-hmm.  
 3 MR. ROSCETTI: So you're asking with these four  
 4 examples in Exhibit 6, if any of them are related to  
 5 DOE's hazard categorization of the facilities?  
 6 MR. SANTOS: That's one, or their view that any  
 7 of the issues underlying them did not impact public --  
 8 does not impact public health and safety.  
 9 MR. ROSCETTI: Okay. So let me start with the  
 10 bottom bullet regarding the technical basis documents.  
 11 My understanding is the reason that we had trouble  
 12 accessing that information was because it was  
 13 pre-decisional and deliberative.  
 14 MR. SANTOS: Okay.  
 15 MR. ROSCETTI: The third bullet, deliberations  
 16 regarding the nuclear explosive safety studies at Pantex  
 17 was also, again, deliberative. With respect to the  
 18 second bullet and the first bullet, I don't know the  
 19 specifics of those document requests, so I will have to  
 20 take the question for the record as to whether or not  
 21 those two difficulties accessing information were  
 22 related to the Department's view regarding the effect or  
 23 impact on workers versus public health and safety.  
 24 MR. SANTOS: Thank you. If you could take it  
 25 for the record, I appreciate that, because one of the

1 things I'm trying to understand is whether without  
 2 debate the Department is simply expressing their view  
 3 that it doesn't impact public health and safety without  
 4 the Board's view of whether it does or not. So, okay.  
 5 ACTING CHAIRMAN HAMILTON: Mr. Moury, to kind of  
 6 finish up on this line of inquiry, the order contains  
 7 further exemptions and definitions for Hazard Category 1  
 8 and 2 facilities that do not contain Safety-Class  
 9 Controls. Is it the intent of the order to in any way  
 10 restrict the Board's access to only facilities with  
 11 Safety-Class Controls?  
 12 MR. MOURY: No. I think -- are you -- are you  
 13 trying to get at the idea of restrictions for  
 14 criticality safety? Is that your concern?  
 15 ACTING CHAIRMAN HAMILTON: To some degree, yes.  
 16 MR. MOURY: To a large extent.  
 17 ACTING CHAIRMAN HAMILTON: There's other  
 18 examples, but you can use that one.  
 19 MR. MOURY: Well, let me begin with criticality  
 20 safety. I think we recognize that, one, ensuring  
 21 appropriate oversight of criticality safety is  
 22 important. It's a special, unique area, it provides us  
 23 with -- you know, provides the public with a certain  
 24 degree of understanding and comfort that we are  
 25 providing an adequate level of protection. We have an

1 annual reporting requirement to the Board that we will  
 2 continue to fulfill in the area of criticality safety.  
 3 So that information will still be provided to the Board.  
 4 I am not aware of the other facilities that are  
 5 Category 2 without the safety controls, and I would have  
 6 to take that as a lookup and provide that to the record.  
 7 ACTING CHAIRMAN HAMILTON: Thank you, Mr. Moury.  
 8 The Chair recognizes Board Member Connery.  
 9 MS. CONNERY: So, I apologize, this is going to  
 10 have a little bit of a lengthy introduction, but that's  
 11 mostly for the public edification. The order defines  
 12 those facilities that impact public health and safety,  
 13 as we have just been discussing, based on the Exemption  
 14 3 and the definitions in the order, those facilities  
 15 would need to impact individuals beyond the site  
 16 boundary for them to be relevant; two, have Special  
 17 Nuclear Material as defined in the order, which notably  
 18 does not include Tritium; and three, new Safety-Class  
 19 Controls, as we just discussed.  
 20 While I do not subscribe to the Department's  
 21 definition of and limits to the Board's statutory  
 22 authority in these areas, I would like to discuss the  
 23 attempt to separate public safety from worker safety.  
 24 Safety is an integrated system relying on layers of  
 25 engineered and administrative controls and practices.

1 These layers of defense often fail in isolated ways,  
 2 evidenced through low-level events that may impact only  
 3 the workers prior to a series of failures which could  
 4 ultimately lead to a release of offsite to the public.  
 5 To illustrate, I would introduce Exhibit 7 and  
 6 13 to the proceedings. This is the Board Technical  
 7 Report 20, which Mr. Moury referenced earlier,  
 8 Protection of Collocated Workers At the Department of  
 9 Energy's Defense Nuclear Facilities and Sites issued in  
 10 1999, which lays out the case for the interdependence of  
 11 controls and systems to ensure safety. Catching and  
 12 correcting failures at the lowest levels can predict and  
 13 prevent larger scale problems that could lead to public  
 14 release and provide the most effective protection of the  
 15 public.  
 16 If I cannot evaluate all the layers of  
 17 Defense-in-Depth to understand where potential  
 18 weaknesses exist, I cannot make a determination of  
 19 adequate protection for the public.  
 20 Mr. Moury, do you agree that deficiencies  
 21 identified in a Non-Safety-Class Control could have  
 22 potential implications for Safety-Class Controls either  
 23 at the same facility or at another facility on-site?  
 24 MR. MOURY: Could you repeat that last -- your  
 25 last, please.

1 MS. CONNERY: Do you agree that deficiencies  
2 identified in a Non-Safety-Class Control could have  
3 potential implications for Safety-Class Controls either  
4 at the same facility or at another facility on-site?

5 MR. MOURY: Well, if we are talking about  
6 workers and their response to an accident situation  
7 where they are relied on to ensure adequate protection  
8 of public health and safety, then yes, that definitely  
9 would apply, and I think the Board is fully entitled to  
10 look at those controls that are necessary to be in place  
11 to ensure that protection.

12 If you're asking can those controls have impact  
13 on adjacent facilities, that, again, is where we are  
14 talking about public health and safety versus collocated  
15 and worker safety, and the Board's -- or the  
16 Department's position right now is that we have many,  
17 many controls, many, many programs in place that ensure  
18 that protection of our own employees, and as the Deputy  
19 Secretary mentioned in his comments, the buck stops with  
20 us on protection of those employees.

21 MS. CONNERY: Mr. White?

22 MR. WHITE: So the direction I gave our folks  
23 which is really clear, which is we will continue to  
24 support Board staff reviews and assessments at all of  
25 our Hazard Category 2 facilities with no distinction on

1 our Haz Cat 2 facilities.

2 MS. CONNERY: And like I said, I appreciate the  
3 fact that you want to implement that way, but my  
4 challenge is that that's not what the order says, and  
5 when you go away and your successor comes along, and  
6 they read verbatim what's in the order, then we will  
7 have a challenge going forward, and the next Board or  
8 successive boards will not be able to have access to  
9 that information and we could be facing a big challenge  
10 at the facilities.

11 MR. WHITE: I mean, I don't read the order that  
12 way, but I understand your point.

13 MS. CONNERY: So my last question is for  
14 Mr. Roscetti. Can you discuss the potential  
15 implications of restricting the Board's oversight rule  
16 based on the exemptions and definitions as written in  
17 the order?

18 MR. ROSCETTI: So as you've said, safety is an  
19 integrated system, and the adequate protection of the  
20 public relies on Defense-in-Depth in layers. To help  
21 answer your question, I request Exhibit 8 be entered  
22 into the record.

23 This exhibit represents the staff's analysis of  
24 candidate defense nuclear facilities across the complex,  
25 broken down by potential restrictions in the Interface

1 whether we're talking about Safety-Class or Safety-  
2 Significant Controls.

3 In terms of the advice and recommendations you  
4 guys provide, as we always have, we'll take into  
5 account, you know, larger questions of risk management  
6 and we'll discuss those with you, but there's no  
7 expected change from our perspective in terms of how we  
8 respond to those.

9 I mean, there would always be questions of  
10 timing, there was recently question of timing of review  
11 at Pantex, but those have nothing to do with this order  
12 or your statutory responsibilities, those only had to do  
13 with our availability of resources.

14 MS. CONNERY: So just to be clear, I wasn't only  
15 speaking about a worker that performs a function that a  
16 safety -- that a Non-Safety Class Control affecting that  
17 worker could then implicate a Safety-Class Control, I  
18 was talking about more of an integrated safety  
19 management system in which an erosion of capabilities in  
20 a larger facility or the facilities themselves becoming  
21 degraded could be lead indicators for something  
22 happening at the facilities that would have impacted  
23 public health and safety.

24 MR. WHITE: And that's one of the reasons that  
25 we will continue to support your Board reviews at all of

1 Order. Reading the words in the order, the Board's  
2 access could be limited to just those facilities with  
3 Safety-Class Controls, as indicated by the red arrow on  
4 the slide, representing a 71 percent reduction in the  
5 number of candidate facilities.

6 Next I request Exhibit 9 be entered into the  
7 record. It further illustrates the impacts of the  
8 order's restrictions by site. Specifically, the green  
9 bars represent the total number of candidate defense  
10 nuclear facilities at a given site. The red bars  
11 represent only Hazard Category 1 and 2 nuclear  
12 facilities with Safety-Class Controls.

13 You can see a large drop in the number of  
14 facilities at most sites. Notably, the Waste Isolation  
15 Pilot Plant does not have any Safety-Class Controls,  
16 therefore the Department would prevent -- could prevent  
17 the Board oversight at the Waste Isolation Pilot Plant.

18 Again, I reiterate what you said, safety is an  
19 integrated system, and the adequate protection of the  
20 public relies on Defense-in-Depth in layers. Limiting  
21 the Board's access to just those facilities with  
22 Safety-Class Controls would prevent the Board and the  
23 Board's staff from evaluating those layers.

24 MS. CONNERY: And just to put a point on it,  
25 because as the Department has stated several times, they



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1 won't necessarily limit our access, but they will limit  
 2 their response, and our effectiveness is only as good as  
 3 the Department's response to our advice.  
 4 ACTING CHAIRMAN HAMILTON: For this line of  
 5 inquiry, the Board recognizes Board Member Santos. Or  
 6 the Chairman recognizes Board Member Santos.  
 7 MR. SANTOS: Thank you, Acting Chairman.  
 8 I just want to follow up on the last point by  
 9 Ms. Connery, and I'm a little bit confused. If I pay  
 10 attention to the answers provided by Mr. White to  
 11 Ms. Connery, you kept referring to Hazard Category 2,  
 12 but in the previous discussions, we were discussing  
 13 that, now we will pretty much have access and  
 14 information to all defense nuclear facilities. So are  
 15 you trying to limit it to Hazard Category 2, or not?  
 16 MR. WHITE: So we intend to provide information  
 17 and facility access related to all of our defense  
 18 nuclear facilities.  
 19 MR. SANTOS: Okay.  
 20 MR. WHITE: In the cases where we may pushback  
 21 would relate to in-depth staff reviews at a facility  
 22 that pull away site resources to look at a particular  
 23 subject. If that subject appears to have no real  
 24 significance from a safety perspective, we may do the  
 25 same thing we've always done with you guys which is pick

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1 up the phone and discuss whether that's the best use of  
 2 our resources.  
 3 MR. SANTOS: To follow up on that, you mentioned  
 4 in-depth resource or commitments, do you have any  
 5 criteria or have you communicated any criteria what  
 6 would constitute a threshold for when you feel that the  
 7 staff request exceeds that threshold and therefore there  
 8 should be pushback?  
 9 MR. WHITE: No, we've never needed such  
 10 thresholds in the past and I think we've worked just  
 11 fine working through all of the issues we've had in the  
 12 past and I see that continuing.  
 13 MR. SANTOS: So right now there's no guidance.  
 14 Okay. Thank you.  
 15 ACTING CHAIRMAN HAMILTON: Thank you,  
 16 Mr. Santos.  
 17 The Board recognizes or the Chairman recognizes  
 18 Ms. Roberson.  
 19 MS. ROBERSON: Thank you, Mr. Chairman.  
 20 I didn't choose to raise my hand, but I will say  
 21 to you the reason we're asking questions is because we  
 22 do see impact, and I think it's important to know we're  
 23 just not looking at the words, we're assessing what  
 24 we're actually seeing in the data we're gathering.  
 25 The Board has provided recommendations and other

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1 advisory correspondence to the Department in areas that  
 2 focus on safety of workers, such as criticality and  
 3 safety of radiological protection, work planning and  
 4 control, conduct of operations, and Tritium activities.  
 5 The Department emphasized the word "public" in its  
 6 order, to make it explicit that the Department does not  
 7 view the role of the worker in ensuring nuclear safety  
 8 as an essential component of how the Department protects  
 9 public health and safety.  
 10 So I would like to start with Mr. Roscetti. Can  
 11 you summarize for us the Board's correspondence in  
 12 recent years identifying safety issues and any actions  
 13 taken by DOE in areas that may now be exempted by this  
 14 order as it relates to worker safety.  
 15 MR. ROSCETTI: The Board has identified safety  
 16 issues and sent the Department recommendations,  
 17 technical reports and other correspondence in areas that  
 18 are now exempted by the Interface Order. I will share a  
 19 few examples to illustrate previously identified Board  
 20 safety issues which fall into these areas. I ask that  
 21 Exhibit 7 be entered into the record.  
 22 There are at least 13 Board recommendations that  
 23 explicitly discuss worker safety. I note that in none  
 24 of these cases did the Department's response to the  
 25 recommendations challenge or otherwise question the

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1 Board's statutory authority regarding worker safety.  
 2 As an example, Recommendation 2012-1 concerned  
 3 Building 235-F at the Savannah River site. In one  
 4 accident scenario, the calculated unmitigated dose  
 5 consequences to the collocated worker was 27,000 rem  
 6 Total Effective Dose. For perspective, the Department's  
 7 directives generally require safety controls for  
 8 potential worker exposures in excess of 100 rem Total  
 9 Effective Dose.  
 10 At the time the Board sent the Department  
 11 Recommendation 2012-1, the worker population near  
 12 Building 235-F routinely numbered more than a thousand.  
 13 In response to the Board's Recommendation 2012-1, the  
 14 Department developed an implementation plan which  
 15 addressed safety issues and improved worker safety.  
 16 Next I ask that Exhibit 8 be entered into the  
 17 record. This slide represents letters sent by the Board  
 18 over the last five years that include worker safety  
 19 issues. Most recently in a letter dated June 4th, 2018,  
 20 the Board noted the high mitigated radiological  
 21 consequences to workers for a number of accident  
 22 scenarios at the Savannah River site's treating  
 23 facilities. Several of these accident scenarios had  
 24 calculated dose consequences in the thousands of rem  
 25 Total Effective Dose to the collocated worker.

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1 The Board stated it was concerned that there is  
2 a need to evaluate and implement additional safety  
3 controls for the protection of workers. As you can see  
4 from the other examples on the screen, the Board has  
5 routinely sent letters identifying safety items with  
6 regard to workers in which the Department took action to  
7 correct.

8 I ask that Exhibit 9 be entered into the record.

9 ACTING CHAIRMAN HAMILTON: And, Mr. Roscetti,  
10 just for recollection, I think your exhibit numbers are  
11 not matching the slides. We are looking at 12 now, the  
12 last one was 11, and the first one was 10. So we can  
13 make that correction.

14 MR. ROSCETTI: Yes, sir. So I ask that Exhibit  
15 12 be entered into the record. Note 21 of the total 41  
16 Board technical reports deal either in part or  
17 exclusively with worker safety. As listed in Exhibit  
18 12, two clear examples of this practice include  
19 Technical Report 20 and Technical Report 29.

20 Next I ask that Exhibits 1, 2 and 3 be entered  
21 into the record. These exhibits illustrate the  
22 importance of workers in implementing administrative  
23 safety controls.

24 In closing, I note that the Interface Order  
25 potentially limits the Board's access regarding all of

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1 said. The Board's -- the Department's position is that  
2 issues involving worker protection should not be a part  
3 of formal recommendations? For instance, we can talk  
4 about the Tritium, the draft Tritium recommendation.

5 MR. MOURY: That's correct, and I think if you  
6 recall the Secretary's response to that draft Tritium  
7 recommendation, he annotated that the Tritium element of  
8 that recommendation was a worker health and safety issue  
9 and was not appropriate for the recommendation.

10 MS. ROBERSON: Well, actually, what the  
11 Department said is, in light of the limitations on the  
12 Board's authority under some enabling legislation, we  
13 could not speak about it. That's what the letter  
14 actually said. So it was the Department took the  
15 position that it was outside of the Board's authority to  
16 speak on worker protection. Did I read that wrong?

17 MR. MOURY: No, that is my intent. You're more  
18 eloquent than I am, so that -- I think that's  
19 appropriate.

20 MS. ROBERSON: So is it the -- has the  
21 Department concluded that the Board must be silent on  
22 issues impacting worker health and safety?

23 MR. MOURY: No, as I said before, if you have  
24 issues relating to worker health and safety, communicate  
25 them. Communicate them to the Department. Are you

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1 the examples I have covered.

2 MS. ROBERSON: Thank you, Mr. Roscetti.

3 So, Mr. Moury, is it the Department's position  
4 in its order that the Board is prohibited by statute  
5 from transmitting correspondence or reports to the  
6 Department or to Congress on issues that impact workers?

7 MR. MOURY: No. It is not. The Board -- the  
8 Board -- or the Department welcomes any issues that the  
9 Defense Board has relative to worker protection. If you  
10 see issues that are a part of your reviews as you're  
11 going about your review, and you want to provide those  
12 to the Department, we welcome those. We want to know  
13 about issues that are going on in our facilities.

14 You have talented staff that are out in the  
15 facilities, you have resident inspectors that are there  
16 all the time, we need to know the information and the  
17 things that they are seeing. The only position that we  
18 are taking is relative to the formal board  
19 recommendation process, and whether or not a worker  
20 protection should be an element of that recommendation  
21 process. And the Department's current position is that  
22 worker protection is not a part of that; however, those  
23 issues should be communicated one way or another, either  
24 to the on-site personnel, to the Secretary, to whoever.

25 MS. ROBERSON: I'm confused about what you just

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1 implying that the only vehicle for communicating those  
2 issues is through a formal Board recommendation to the  
3 Secretary? You have other -- you have other tools  
4 available to you to communicate issues to the  
5 Department.

6 MS. ROBERSON: But we decide what tools we use  
7 to communicate.

8 MR. MOURY: Correct. Correct.

9 MS. ROBERSON: So what I'm misunderstanding or  
10 just not quite getting, what is the difference? I'm  
11 really to understand what is the difference.

12 MR. MOURY: The difference between a letter that  
13 is provided to us and we are to evaluate those issues  
14 and take action as appropriate, as compared to the  
15 formal process of a recommendation are quite significant  
16 in terms of resources that the Department applies to it,  
17 the administrative resources and the people that are  
18 applied to it.

19 MS. ROBERSON: So let me just be clear. If the  
20 Board is evaluating -- let's just say adequate  
21 protection of the public, which is exactly what we said  
22 in that draft recommendation, because of the vehicle the  
23 Department will not accept it?

24 MR. MOURY: Well, define "accept."

25 MS. ROBERSON: Well, we talked about an example

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1 earlier. Reject.  
 2 MR. MOURY: When you say we will not accept, we  
 3 will not accept the --  
 4 MS. ROBERSON: The information.  
 5 MR. MOURY: No, we will accept the information,  
 6 and we will evaluate it based on its merits. All I am  
 7 saying is that it will not be handled through the formal  
 8 recommendation process.  
 9 MS. ROBERSON: And that is why? Tell me again?  
 10 I'm missing that.  
 11 MR. MOURY: Because the formal recommendation  
 12 process from the Board's perspective is dealing with  
 13 public health and safety, not worker health and safety.  
 14 MS. ROBERSON: Well, the Board's perspective is  
 15 that everything it does is done to ensure adequate  
 16 protection of the problem.  
 17 MR. MOURY: Well, clearly the Tritium example  
 18 that you referenced was not a public health and safety  
 19 issue.  
 20 MS. ROBERSON: So let me go to Mr. White, who is  
 21 itching to speak anyway. Let me ask my question and you  
 22 can say whatever you want. Does NNSA rely on worker  
 23 actions, qualifications, reliability, presence, to  
 24 execute protective actions to ensure protection of the  
 25 public at your facilities? Any of your facilities?

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1 MR. WHITE: Yeah, we have any number of  
 2 facilities where the workers are a very important part  
 3 of our safety management programs.  
 4 MS. ROBERSON: So you rely on the worker as a  
 5 part of your mosaic to ensure protective actions are in  
 6 place and are taken to protect the public?  
 7 MR. WHITE: That's correct.  
 8 MS. ROBERSON: So why would the Board not  
 9 evaluate the same?  
 10 MR. WHITE: But again, as Mr. Moury pointed out,  
 11 there's a difference between how we choose to address an  
 12 issue that you raise and whether or not you raise it and  
 13 whether or not we respond. In the case of the Tritium  
 14 issue that you're discussing at Savannah River, we are  
 15 continuing to work to improve those safety basis  
 16 documents and get them up to date and we are keeping  
 17 your folks there up to speed on where we are.  
 18 So the fact that we chose not to respond to it  
 19 via an implementation plan doesn't mean that we are not  
 20 continuing to address the underlying concern that you  
 21 had.  
 22 And in that respect, if your recommendation also  
 23 didn't make the connection you just made, right, so the  
 24 recommendation that was sent to the Board did not  
 25 actually make the connection that you just made, which

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1 does tie directly to public health and safety. And so  
 2 if your recommendation had made that connection, I mean,  
 3 that's a different thing than about being simply about  
 4 the protection of the worker.  
 5 MS. ROBERSON: So can I quote for you the  
 6 Board's draft recommendation. Page 1, "Recommendation  
 7 2018.1 identifies the need to address deficiencies and  
 8 the safety basis for facilities at the Savannah River  
 9 Site related to atmospheric dispersion modeling,  
 10 methodology and implement safety measures, as needed, to  
 11 provide adequate protection of the public, including  
 12 (collocated workers and workers with responsibilities  
 13 for ensuring adequate protection of the public)."  
 14 We thought we did make that connection.  
 15 MR. MOURY: Okay. All right.  
 16 MS. ROBERSON: That's what I was saying.  
 17 ACTING CHAIRMAN HAMILTON: Ms. Roberson,  
 18 Mr. Santos has a clarifying question, very briefly,  
 19 please.  
 20 MR. SANTOS: If you allow me.  
 21 MS. ROBERSON: Yes.  
 22 MR. SANTOS: Okay. So if we take the example  
 23 of -- if you can put out the recommendations of the  
 24 worker safety, Mr. Roscetti. What exhibit was that?  
 25 Say we take the second bullet, Recommendation

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1 2012, Savannah River Site, Building 235-F, which was  
 2 actually, you know, approved, sent and responded by the  
 3 Department of Energy, is the position that given the new  
 4 construct and the new order, that recommendation would  
 5 have not been accepted by the Department with an  
 6 implementation plan developed?  
 7 MR. WHITE: Certainly the 2010-1 relates to  
 8 public protection as well as protection of the worker,  
 9 so I don't think that --  
 10 MR. SANTOS: 2012-1.  
 11 MR. WHITE: I would have to go back and look at  
 12 what that recommendation is. Without going back and  
 13 looking at it in detail, I wouldn't know, but I'm happy  
 14 to sit down and talk to you after doing that.  
 15 MS. CONNERY: It's still open, by the way.  
 16 ACTING CHAIRMAN HAMILTON: Ms. Roberson?  
 17 MS. ROBERSON: Okay. So, Mr. Moury, for my next  
 18 question, the statute doesn't specify the safety systems  
 19 or protective measures utilized to ensure adequate  
 20 protection of public health and safety. The statute  
 21 doesn't specify that the Board shall provide oversight  
 22 to ensure the health and safety of confinement  
 23 ventilation systems, or fire protection systems, or any  
 24 of the other systems that are relied on.  
 25 And it's even further complicated by the fact

1 that there is a growing use of administrative controls,  
 2 i.e., worker actions, and in some cases, to my dislike,  
 3 more reliance on administrative programs, not just  
 4 discrete actions, but programs which are executed by the  
 5 workforce.  
 6 So all passive engineer features, which we all  
 7 know if we had passive engineer features would be a  
 8 different -- we might have a different view, but we  
 9 don't. That's not what we have to deal with, the  
 10 infrastructure we have. So why is the Department's  
 11 interpretation that the health and safety of the workers  
 12 should be exempt? And you can say in recommendations, I  
 13 don't get the difference in the vehicle, but the way  
 14 your order reads is, we can't look there, and that's how  
 15 I read your feedback to the Board on the draft  
 16 recommendation. Maybe I'm wrong, maybe that's not your  
 17 intent, but why would it be exempt?  
 18 MR. MOURY: You're talking about specific  
 19 controls. I mean, you're talking about specific admin  
 20 controls that are in place to ensure adequate protection  
 21 of public health and safety, and we have never said that  
 22 the Board cannot look at those controls that are put in  
 23 place.  
 24 Part of the problem we have in the Department,  
 25 as you know, is the aging infrastructure, and sometimes

1 design controls or passive controls, we are not able to  
 2 put those in place. So the default position,  
 3 unfortunately, in order to complete the mission that the  
 4 taxpayers expect us to complete, makes us put  
 5 administrative controls in place. And we have a very  
 6 specific process for ensuring that those controls are in  
 7 place and maintained, and certainly they are not the  
 8 first priority as our hierarchy of controls articulates,  
 9 but they are a necessary tool that we have to use on a  
 10 periodic basis.  
 11 MS. ROBERSON: And I absolutely understand it.  
 12 In fact, in 2002, I don't know what exhibit it is, the  
 13 Board actually brought this to Department's attention,  
 14 which I think maybe both of you were still here. The  
 15 Board issued a recommendation to prod the Department  
 16 into creating more discipline around its use of  
 17 administrative controls, but we are also starting to  
 18 rely on administrative programs, which are not discrete  
 19 actions as well, too, in that venue.  
 20 And so we all know the infrastructure we have,  
 21 and I don't disagree with anything you said, but I'm  
 22 trying to understand, having been dealt that hand,  
 23 what's the deal with the Board can only communicate a  
 24 certain way on worker safety? That's what I'm trying to  
 25 understand.

1 Okay. So my last -- did you want to say  
 2 something, Mr. White?  
 3 MR. WHITE: No.  
 4 MS. ROBERSON: Okay. So my last -- the last  
 5 point I wanted to make was -- and we've had a great  
 6 conversation, and you guys have provided some  
 7 interpretations that are different from reading the  
 8 plain language of the order. And so one of the things  
 9 that I want to bring to your attention and just ask you  
 10 to confirm in this hearing is I need you to verify that  
 11 you -- that you are sure that this interpretation as it  
 12 relates to worker safety is not a signal to workers at  
 13 defense nuclear facilities to not communicate worker  
 14 safety concerns to the Board or staff because the  
 15 Department's view is that the Board has no statutory  
 16 authority to evaluate those.  
 17 MR. WHITE: So for NNSA, I specifically  
 18 addressed that question at the training session I gave  
 19 for our folks and I asked them to reinforce our  
 20 perspective which is that folks that want to raise  
 21 safety issues are free to raise them in whatever avenue  
 22 they think would be most appropriate and most effective  
 23 at getting them addressed. Certainly we hope our plant  
 24 and laboratory employees feel comfortable raising them  
 25 with their leadership; if they don't, they are welcome

1 to raise them with the Department. If for some reason  
 2 they don't feel comfortable raising them to the  
 3 Department through their own leadership, they are  
 4 welcome to raise those through you or your resident  
 5 inspectors, and we will address those as they come up.  
 6 But there is certainly no intention to keep folks from  
 7 raising safety issues that they see at our facilities.  
 8 We encourage that and we want that to happen.  
 9 MR. MOURY: I believe what Mr. White has said is  
 10 fully consistent with the Secretary or Deputy  
 11 Secretary's personal commitment to excellence in health  
 12 and safety, and with the Chairman's permission I will  
 13 submit that for the record, their commitment, but it is  
 14 that they are encouraged to raise any issues that they  
 15 may have. And as Mr. White has noted, if they are  
 16 uncomfortable raising those to their current management,  
 17 there are a broad variety of other venues, both within  
 18 the Department and outside the Department that they are  
 19 welcome to do that. And they are encouraged to do that  
 20 without any retaliation or fear of retribution.  
 21 MS. ROBERSON: I said that was the last thing I  
 22 was going to say, this is the last thing I was going to  
 23 say. I thank you for that, but I think the point I'm  
 24 trying to make is what you intend and what's in writing  
 25 sometimes don't jive. And I'm just telling you, you

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1 really need to look at how you communicated that  
2 message.

3 MR. MOURY: And if I would just add to that, I  
4 would appreciate it if you would write or communicate  
5 those specific areas where you think that what we had  
6 communicated to you is not in compliance or not aligned  
7 with the order itself. We are open to your input, we  
8 want to make this work, as the deputy said. We believe  
9 this relationship is important. We are a team, so to  
10 speak, but we each have our roles that we have to  
11 fulfill.

12 So if you could provide those to us, and if we  
13 feel it necessary to change the order, there is nothing  
14 that precludes us from doing that.

15 MS. ROBERSON: Thank you.

16 ACTING CHAIRMAN HAMILTON: Mr. Santos has a  
17 follow-on question and then I do. So, Mr. Santos?

18 MR. SANTOS: Thank you, Mr. Chairman. And thank  
19 you, Mr. Moury. I appreciate that willingness to remain  
20 open for formal input from the Board. I want to follow  
21 up on that, because listening to all of these  
22 discussions, it is clear to me that we are having  
23 differing interpretations of the Board enabling statute  
24 and some aspects regarding the importance of worker  
25 safety.

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1 And given your last statement, Mr. Moury, do you  
2 consider that it would be prudent for the Department of  
3 Energy to simply withdraw DOE Order 140.1 until this  
4 administration seeks additional clarification from  
5 Congress?

6 MR. MOURY: No, I don't, not until we get  
7 clarification from -- I mean, if the Congress elects to  
8 change the Atomic Energy Act, then we will certainly  
9 comply with the Atomic Energy Act. That's our  
10 interpretation. Your general counsel is involved, our  
11 general counsel is involved in interpretation of the  
12 public versus worker safety, and I will leave it at  
13 that.

14 MR. SANTOS: Do you consider that it will be  
15 prudent for the Department of Energy to withdraw the  
16 order and seek input and feedback from the public and  
17 other interested stakeholders, which includes the Board?

18 MR. MOURY: I do not, because I believe this  
19 defines the responsibilities for the Department of  
20 Energy's Federal contract -- Federal employees and  
21 contractors. Having said that, if there is confusion on  
22 the part of the Board, or areas of the order that they  
23 think are not in alignment with what we have been  
24 talking about, then we are looking for that formal  
25 input.

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1 MR. SANTOS: Thank you. Mr. White, do you  
2 consider that it would be prudent for the NNSA to freeze  
3 implementation of the DOE order until this  
4 administration seeks additional clarification from  
5 Congress?

6 MR. WHITE: No, I don't think that's necessary.

7 MR. SANTOS: Do you consider that it would be  
8 prudent for NNSA to freeze implementation of this order  
9 and seek input and feedback from the public and other  
10 interested stakeholders?

11 MR. WHITE: I don't think it's necessary.

12 MR. SANTOS: Mr. Roscetti, do you consider that  
13 it would be prudent for the Board to formally request  
14 that the administration seek clarification from Congress  
15 regarding the various interpretations of the Board's  
16 enabling statute, and potentially Atomic Energy Act?

17 MR. ROSCETTI: Could you please repeat that  
18 question, sir.

19 MR. SANTOS: Yes. Do you consider that it would  
20 be prudent for the Board to formally request that the  
21 administration seek clarification from Congress  
22 regarding the various interpretations of the Board's  
23 enabling statute and potentially the Atomic Energy Act?

24 MR. ROSCETTI: Sir, I think it's one avenue the  
25 Board could pursue. In my role as the technical

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1 director, I think it's up to the Board to determine what  
2 it thinks its authority is, and make decisions regarding  
3 the adequate protection of the public health and safety,  
4 and provide that information to the Department, to the  
5 Secretary of Energy in whatever vehicle the board  
6 determines is necessary.

7 MR. SANTOS: Thank you for that answer. I agree  
8 with that answer.

9 Mr. Moury, could you please explain the process  
10 for the Board or any member of the public to formally  
11 solicit changes to Order 140.1?

12 MR. MOURY: Well, 140.1 is posted on the  
13 website, and on the website, there is a point of  
14 contact. My office is the Office of Primary Interest,  
15 and they can provide comments to the Office of Primary  
16 Interest on any concerns they might have.

17 I would like to say one thing on your previous  
18 line of questions, if you recall, we were operating to a  
19 17-year-old manual that I don't think any of you would  
20 disagree is no longer compliant with the law, and it  
21 does not even address the Board's new process for  
22 providing recommendations to the Board, draft  
23 recommendations. So we are not comfortable with having  
24 a document that we are following that is not in  
25 compliance with the law.

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1 MR. SANTOS: I do not disagree with a lot of  
 2 what you said. When it comes to what I call  
 3 transactional aspects, the part that is getting my  
 4 reaction is the changes to the role of independent  
 5 oversight and the different interpretations of the  
 6 Board's statute and Atomic Energy Act. Thank you.  
 7 ACTING CHAIRMAN HAMILTON: Ms. Connery?  
 8 MS. CONNERY: Do you have a similar order for  
 9 your relationship with the General Accounting Office?  
 10 MR. WHITE: I believe we do have an order that  
 11 governs our interface with the IG and the GAO from an  
 12 audit perspective.  
 13 MS. CONNERY: Were they involved in the  
 14 development of that order?  
 15 MR. WHITE: I couldn't answer that question for  
 16 you. You would have to take that for the record.  
 17 MS. CONNERY: Thank you.  
 18 ACTING CHAIRMAN HAMILTON: Continuing on in this  
 19 line of inquiry, I have one final question. Could we  
 20 put up Exhibit 10 again, please. And, Mr. Roscetti,  
 21 could you remind us again of the second Recommendation  
 22 2012-1, can you tell us about that, please? Just to set  
 23 the table.  
 24 MR. ROSCETTI: Yes, sir. So Recommendation  
 25 2012-1 concerns Building 235-F at the Savannah River

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1 Site. One of the accident scenarios had calculated  
 2 unmitigated dose consequences to the collocated worker  
 3 that were 27,000 rem Total Effective Dose. The  
 4 Department's directives generally require safety  
 5 controls when potential worker exposures are in excess  
 6 of 100 rem Total Effective Dose.  
 7 And when the Board sent this recommendation  
 8 2012-1 to the Department, there were approximately a  
 9 thousand workers near Building 235-F, or people near  
 10 235-F.  
 11 ACTING CHAIRMAN HAMILTON: Thank you. And this  
 12 was long before my time on the Board, am I to understand  
 13 that this recommendation was all about worker safety,  
 14 collocated and worker safety, is that the total set of  
 15 the concern?  
 16 MR. ROSCETTI: Sir, I would have to review the  
 17 recommendation to answer 100 percent affirmatively, but  
 18 I think so, yes, sir.  
 19 ACTING CHAIRMAN HAMILTON: But certainly would  
 20 it be fair to say that a big chunk of this  
 21 recommendation was about workers?  
 22 MR. ROSCETTI: Yes, sir.  
 23 ACTING CHAIRMAN HAMILTON: Okay. So this is the  
 24 same question that Mr. White was asked a minute ago, I  
 25 want to give Mr. Moury a chance to give his response, if

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1 the Board were to offer this recommendation or one like  
 2 it today, what would be the Department's response?  
 3 MR. MOURY: I would -- well, assuming there are  
 4 no public health and safety issues, and I, like  
 5 Mr. Roscetti, would have to go back and look at it  
 6 again, this is the feedback we would want from the  
 7 Board. I mean, this was not an unknown issue at the  
 8 site, it was being put into their risk ranking, and  
 9 going to be addressed as funding allowed. But we would  
 10 probably have taken the exact same actions that the  
 11 implementation directed us to, because this is an issue  
 12 that the Department recognized we needed to deal with.  
 13 All I'm saying is that there wouldn't have been  
 14 an implementation plan where we have made specific  
 15 commitments to the Board to address.  
 16 ACTING CHAIRMAN HAMILTON: You did make  
 17 commitments here, correct?  
 18 MR. MOURY: And that is part of what the Deputy  
 19 was talking about, is aligning what the specific roles  
 20 and responsibilities and ownership of the Department are  
 21 relative to areas that are outside or that he considers  
 22 to be -- you know, where the buck stops with the  
 23 department.  
 24 ACTING CHAIRMAN HAMILTON: Okay. I'm having a  
 25 lot of cognitive dissidence between what you just said

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1 now and what we discussed about 10 or 15 minutes ago  
 2 where Ms. Roberson's line of inquiry about your saying  
 3 that we have to have other mechanisms other than a  
 4 recommendation if we're talking about worker safety. So  
 5 I don't need to probe it further, I'm just, I'm not  
 6 clear on what that is, but I'll -- that may be just my  
 7 problem.  
 8 I'm going to let Mr. Santos ask the final  
 9 question here on this line of inquiry.  
 10 MR. SANTOS: No further questions.  
 11 MS. CONNERY: I just want to clarify. What  
 12 you're saying is you wouldn't have taken this  
 13 recommendation, you likely would have performed the same  
 14 functions, but not as an implementation plan?  
 15 MR. MOURY: That's correct.  
 16 MS. CONNERY: And who writes an implementation  
 17 plan?  
 18 MR. MOURY: Well, there is a responsible manager  
 19 that's put in place, the responsible manager puts  
 20 together a team --  
 21 MS. CONNERY: So the Department of Energy writes  
 22 the --  
 23 MR. MOURY: The Department of Energy writes an  
 24 implementation plan that has to be approved by the  
 25 Secretary.

1 MS. CONNERY: So it's still the Department of  
2 Energy's plan, the Board doesn't impose the  
3 implementation plan on you, you choose what to put in  
4 the implementation plan after evaluating the information  
5 that we give you to address the issues that we've  
6 raised?

7 MR. MOURY: That is correct.

8 ACTING CHAIRMAN HAMILTON: Ms. Roberson?

9 MS. ROBERSON: Mr. Chairman, can I just add one  
10 clarifying point of question, which is really apropos  
11 since we have two former Board employees -- well, three,  
12 one current, two former. When we talked -- whether  
13 we're talking about 235-F or Tritium or anything else,  
14 the Board doesn't pop out of a balloon with a  
15 recommendation. The Board works sometimes for years  
16 trying to encourage the action that it believes is  
17 necessary.

18 And so I just have to say, the Board uses its  
19 tools very deliberately, but we don't surprise the  
20 Department. So if we raise issues, whether it be  
21 informally or through letters, and we see action, we  
22 tend not to issue recommendations. We issue  
23 recommendations when we don't see that action, and that  
24 was the case on 235. Everybody knew about the issue,  
25 but the Board had been -- the Board, not just the Board

1 staff -- been prodding. We had hearings for several  
2 years. So I just want to make that clear.

3 ACTING CHAIRMAN HAMILTON: Thank you,  
4 Ms. Roberson.

5 The chair recognizes Mr. Santos.

6 MR. SANTOS: Thank you, acting Chairman. It  
7 appears that the new order makes the process of  
8 interfacing with the Board more bureaucratic, less  
9 efficient, and one that could impact safety by delaying  
10 the ability of the Board to provide timely information  
11 to the Secretary of Energy. This seems contrary to the  
12 intent of regulatory reform activities under  
13 Presidential Executive Order 13777.

14 For example, in addition to limiting  
15 interactions with the Board, the Department is  
16 introducing additional bureaucratic approval steps for  
17 each specific request of information or access.  
18 Furthermore, all Board requests need to be referred to  
19 and approved by appropriate Federal departmental site  
20 liaison prior to providing a response back to the Board.

21 Mr. Moury, has the Department taken actions to  
22 ensure that every site has a Federal representative that  
23 will respond in a timely manner to information requests?

24 MR. MOURY: Yes. We have site liaisons at each  
25 of the sites. There are monthly meetings with Mr. Joe

1 Olencz, he discusses issues dealing with the Board to  
2 make sure that we are providing appropriate support.

3 There are no additional bureaucratic steps that  
4 you're alluding to. The requests for information  
5 process is identical to what was in place before. We  
6 have always asked that the Department -- that the  
7 Defense Board deal with our Department of Energy and not  
8 directly with the contractors. The contractors'  
9 contract is with the Department, it is not with the  
10 Defense Board, so it's important for us to understand  
11 exactly what is going on when they're dealing with  
12 Defense Board.

13 MR. SANTOS: Could you provide for the record  
14 the list of the Federal representatives?

15 MR. MOURY: Yes, sir.

16 MR. SANTOS: Thank you. Will this be  
17 implemented consistently at all sites or will there be  
18 different processes for interfacing with the Board and  
19 its employees at each site?

20 MR. MOURY: We have a pretty extensive training  
21 program, the roll-out slides are on the website, the  
22 Departmental rep website, so they are available for you  
23 to look at, and certainly I would be happy to provide  
24 those for the record if you would like those. So, yes,  
25 and this topic is discussed, as I said, every month

1 during these liaison meetings.

2 ACTING CHAIRMAN HAMILTON: Let's stop for a  
3 moment, we have some audio interference. I'm not sure  
4 what that is.

5 (Brief pause.)

6 ACTING CHAIRMAN HAMILTON: Go ahead. I'm sorry.

7 MR. MOURY: I'm sorry, I totally lost my train  
8 of thought.

9 MR. SANTOS: You were talking about the slides  
10 being available.

11 MR. MOURY: Yeah, they are available to you, and  
12 we have had several training sessions, if I'm not  
13 mistaken, all of the liaisons have been trained. And as  
14 I mentioned in my opening, my first comment was we want  
15 to be institutionalized and consistent as we apply these  
16 processes across the complex, because I think you're all  
17 well aware that there are certain sites where it is more  
18 difficult to deal with the Defense Board, and we want to  
19 make sure that everybody is approaching this from the  
20 same perspective and with the same approach.

21 MR. SANTOS: Thank you. Mr. Roscetti, what  
22 impact do you see from any changes in practice as  
23 particularly for the resident inspectors that need ready  
24 access?

25 MR. ROSCETTI: Sir, I see potential for two

1 significant impacts: First, I think the process could  
 2 introduce unnecessary delay in providing the Board  
 3 information needed to perform timely analysis of matters  
 4 that impact safety. In particular, the process requires  
 5 Departmental staff to be the focal point for all  
 6 information requests. Previously site contractors were  
 7 expected to respond to requests while keeping the  
 8 Department's field office personnel apprised.

9 My concern is exacerbated by the fact that many  
 10 of the Departmental site liaisons are senior Federal  
 11 officials that are already facing constraints on their  
 12 time prior to trying to fulfill this administrative  
 13 burden. For example, at the Los Alamos National  
 14 Laboratory, the senior nuclear safety advisor serves in  
 15 this role.

16 Second, I think this language could impede the  
 17 ability of our resident inspectors to meet directly with  
 18 Department and contractor staff. I believe our resident  
 19 inspectors require direct ready access to facilities and  
 20 personnel to inform their safety assessments, and  
 21 ultimately, the Board.

22 MR. SANTOS: Thank you. I agree that ready  
 23 access is extremely important for the resident  
 24 inspectors, given their unique function as the eyes and  
 25 ears of the Board in providing direct oversight. Their

1 functions are clearly different from the functions  
 2 performed by the rest of the Board staff; however, the  
 3 desk reference for the new order doesn't recognize this  
 4 when it states, and I quote, "In all cases, the resident  
 5 inspectors are the same as any other member of the  
 6 Defense Nuclear Facilities Safety Board and the same  
 7 protocols for requests for information and meetings  
 8 shall apply."

9 Mr. Moury, what is the Department's  
 10 interpretation of the responsibility of the various DOE  
 11 elements to provide ready access to the Board resident  
 12 inspectors?

13 MR. MOURY: Well, I think the reading of that  
 14 statement is true. The resident inspectors are members  
 15 of the Board staff. It just so happens that they have  
 16 unescorted access to the facilities, they're at the  
 17 facilities, they have access to the facilities' computer  
 18 systems, the LANS, they have access to a broad plethora  
 19 of information. What we're asking is that they work  
 20 with their liaison on how they are going about their  
 21 business so that we know what's going on.

22 But there is no -- no debate that they play a  
 23 very critical role, not just for the Defense Board, but  
 24 also for the Department of Energy. And I think  
 25 Mr. White would probably talk to you about how NNSA is

1 approaching the Resident Inspector Program.

2 MR. SANTOS: You can follow up the question,  
 3 Mr. White.

4 MR. WHITE: Yeah, I mean, I spent four years as  
 5 a resident inspector for the Board at Pantex, so I have  
 6 first-hand knowledge of what it takes to do that job.  
 7 And I communicated to our folks that, you know, we're  
 8 continuing to give those resident inspectors ready  
 9 access to facilities, to people, to the plant, to the  
 10 meetings, all of the things that they would have had  
 11 access to in that regard previously.

12 The request that we move document requests  
 13 through a Departmental liaison is no different than what  
 14 I did when I was at Pantex. All of my document requests  
 15 got copied to -- I think the gentleman's name was Mike  
 16 Reaka, who was a POC for the site office. And I did  
 17 that in part to make myself more effective, because  
 18 having the Department aware of what I was looking at and  
 19 what I was interested in actually helped ensure that if  
 20 I ran across issues, that I could be more effective at  
 21 getting those addressed.

22 MR. SANTOS: Thank you. Mr. Moury, earlier you  
 23 mentioned, and I agree, that you mentioned that the DOE  
 24 order applies to the DOE elements. It's an order for  
 25 DOE elements, and it doesn't impose -- doesn't appear to

1 impose any restriction on the Board or its staff, but  
 2 we're having that type of discussion right now.

3 When will the -- and since one order -- DOE  
 4 order was issued, you know, no formal input has been  
 5 provided, you know, by the Board yet, but I would like  
 6 to know when will the Department formally communicate to  
 7 the Board any new procedures, processes and requirements  
 8 that the Department will apply to Board personnel,  
 9 including resident inspectors, headquarters personnel  
 10 and even Board members, for us to carry out our  
 11 independent oversight work at the defense nuclear  
 12 facilities which you own? All we have is the order.

13 MR. MOURY: Yeah. If I understand your question  
 14 correctly, I don't anticipate us communicating to the  
 15 Board on changes that are going to occur on how we deal  
 16 with our resident inspectors. If that were to occur,  
 17 certainly we would come and talk to the Board and  
 18 discuss any changes that might be occurring, but I don't  
 19 anticipate that occurring.

20 ACTING CHAIRMAN HAMILTON: Ms. Roberson?

21 MS. ROBERSON: Yeah, just attaching on, I  
 22 appreciate what you said, but I know that you also know  
 23 you have thousands of soldiers out there interpreting  
 24 your order themselves. So, for instance, planning of  
 25 the days, our resident inspectors are there to have eyes



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1 on and ears open, and if they are not allowed access, if  
2 people consider planning of the days pre-decisional,  
3 then we don't have access.

4 I guess what I'm asking is I understand you guys  
5 are doing a lot of training and you're saying, well, if  
6 we find -- we don't have enough soldiers to go out and  
7 find all the problems, we certainly have identified  
8 some. I guess my question is, what check are you guys  
9 doing to make sure that your order is being implemented  
10 the way you intended it to?

11 MR. MOURY: Well, in addition to having a formal  
12 set of training slides that goes through this, our  
13 monthly discussions with the liaisons to go through this  
14 to make sure that it is being implemented consistently  
15 across the complex is our key method for doing that. As  
16 well as, let me just add, also, as well as Mr. White  
17 providing additional training to all of the facility  
18 managers, and I know that EM and Science have done the  
19 same thing.

20 MR. WHITE: I mean, I'll just say that if you  
21 run across examples where our implementation is not  
22 consistent with the way I have described, then by all  
23 means, please, have your folks bring them up to me or  
24 myself or Mr. McConnell and we will take action to  
25 correct that.

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1 MS. ROBERSON: Thank you.

2 ACTING CHAIRMAN HAMILTON: The chair recognizes  
3 Board Member Connery for the last line of inquiry.  
4 Ms. Connery?

5 MS. CONNERY: So the Secretary of Energy's  
6 responsibility under the Board's enabling legislation  
7 limits the ability of the Secretary to deny access to  
8 information to any person who "has not been granted an  
9 appropriate security clearance or access authorization  
10 by the Secretary of Energy, or does not need such access  
11 in connection with the duties of such a person."

12 This contrasts with the interface order which  
13 allows the Department to deny requests related to  
14 deliberative documents, pre-decisional documents or  
15 deliberative meetings.

16 Mr. Roscetti, can you give us some concrete  
17 examples of where limits on access to information could  
18 impede the Board's ability to identify safety issues,  
19 including specific impacts on resident inspectors?

20 MR. ROSCETTI: Yes, ma'am. I'll provide three  
21 examples where these limits might impede the Board's  
22 oversight. Foremost is the emergency response. By the  
23 very nature of an emergency information flow is highly  
24 dynamic, and often insufficiently vetted such that the  
25 Department could conceivably consider it pre-decisional,

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1 the Board could be forced to wait for such information  
2 which would preclude timely Board recommendations and  
3 advice on the matter.

4 Second, its safety basis documentation. I  
5 understand that some sites have already started to treat  
6 the management and operating contractor's submitted  
7 safety basis documents as pre-decisional. To be clear,  
8 these documents are formally approved by contractor  
9 management and have been submitted to the Department for  
10 approval. Historically, this is the point at which the  
11 Board's staff has most effectively reviewed documents  
12 such that issues can be raised during the course of the  
13 Department's review, and any safety concerns resolved  
14 promptly. This approach avoids significant delay in  
15 resolving a safety concern and the potential rework  
16 associated with raising issues with fully approved and  
17 implemented safety controls.

18 Third, the access to information language may  
19 impact the Board staff's ability to monitor the  
20 adherence to the Department and its contractors'  
21 processes and procedures. Often steps involved in  
22 following a process occur in forums that could be  
23 constructed as deliberative. If the Board's staff is  
24 denied access to these meetings, we will be left to  
25 assess process adherence simply by the overall outcome.

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1 As such, we will be unable to provide the Board  
2 assurance that the Department and its contractors are  
3 operating in a manner consistent with procedures and  
4 best practices. As an example, DOE contractors  
5 typically hold some type of fact-finding discussion to  
6 learn from and improve after the occurrence of an  
7 abnormal event. The Board's resident inspectors observe  
8 these discussions and are able to provide an assessment  
9 of the thoroughness and conduct of the fact-finding  
10 meeting, including whether the contractor adhered to its  
11 own process requirements.

12 If the resident inspectors are denied access to  
13 these fact-finding meetings, the resident inspectors  
14 will be left to assess the event solely from the final  
15 report and corrective actions.

16 MS. CONNERY: Thank you, Mr. Roscetti.

17 So I'd make two points. You've been very  
18 vociferous about the fact that this order is about roles  
19 and responsibilities, and that it is the role of the  
20 Department to operate the facilities in the defense  
21 nuclear facilities, as well as play the role as a  
22 regulator.

23 The Board's role is oversight. We are to advise  
24 the Secretary in his role in assuring adequate  
25 protection, which means that it's our job to make sure

1 that the Department of Energy is regulating its  
2 contractors as it should to meet those requirements. In  
3 order to do that, we have to have access to these  
4 meetings, and this information, prior to decisions being  
5 made.

6 Additionally, I would submit that if you're  
7 making decisions that are -- and you're asking for  
8 advice after the fact, then those are by definition  
9 uninformed decisions, because it would be better if we  
10 gave you the information ahead of time.

11 In particular, the Congress has weighed in on  
12 this in terms of design and construction, and has asked  
13 us to provide information early and often so that you  
14 don't have to go through expensive design changes, but  
15 you can take our advice early in the process.

16 So given Mr. Roscetti's testimony, Mr. White,  
17 can you discuss whether his interpretation of the order  
18 is consistent with NNSA's intended implementation  
19 relative to pre-decisional and deliberative information?

20 MR. WHITE: Sure. And I don't think it is.  
21 So -- and I addressed at least parts of what he  
22 discussed very specifically with all of our sites to  
23 make sure that we had a fairly uniform set of  
24 expectations with regard to how we implement this.

25 So on the safety basis documents, for example,

1 the point at which one of our plants or laboratories has  
2 submitted a complete work product as a deliverable to  
3 the Government, I would agree that that is something  
4 that we should share with you. And that is what all of  
5 our sites have been directed to do. So the point at  
6 which our plant or laboratory believes that it's good  
7 enough for the Government to approve, then it is a good  
8 enough definitive product for you to begin to review.

9 The thing that I have suggested that they should  
10 work with you on is the best timing to support an  
11 in-depth staff review of that document. I think from  
12 our perspective, we would like to give our Federal folks  
13 in our site offices or on our safety basis review teams  
14 sufficient time to review the document themselves and  
15 develop a Department position relative to the quality of  
16 that input before we engage with you. But we will  
17 engage with you before we actually implement the  
18 document.

19 So that was sort of the high-level perspective I  
20 gave our folks relative to safety basis documents.

21 On the question of deliberative meetings, I  
22 mean, that's one of the ones that it's a little bit of a  
23 gray space, and we may need to talk about those as they  
24 come up. I mean, certainly, again, when I was a  
25 resident inspector at Pantex, these came up from time to

1 time. And we addressed those as they came up on a  
2 one-off basis, myself first locally, and if that didn't  
3 work, with the Board's management and the Department's  
4 management up here in Washington.

5 So that existed, that sort of discussion existed  
6 under the previous order, and I expect it to continue to  
7 exist from time to time under the new order. I don't  
8 see that as a particular difference.

9 MS. CONNERY: On the safety basis conversation  
10 in particular, I know that you have espoused to us that  
11 you have seen challenges with your Federal capabilities  
12 with regards to looking at safety basis documents and  
13 often cases have to borrow staff from other locations in  
14 order to review safety basis documents, so wouldn't it  
15 make prudent sense to have the Board involved as early  
16 as possible to provide our independent expertise, and if  
17 you are managing your staff, then they could either take  
18 our advice or leave it and make the decisions on their  
19 own without relying or blaming the Board for decisions  
20 that are taken.

21 MR. WHITE: Well, so look at this in terms of  
22 timing, not in terms of whether we eventually give you  
23 access. I think it is important for a couple of reasons  
24 for our folks to have some space to look at those  
25 documents and to decide what we think of them. One, it

1 actually helps you with evaluating the quality of our  
2 evaluation process. By sort of intervening early in the  
3 process, you kind of disturb the reality associated with  
4 what the Department would or would not have found in  
5 regards to those documents.

6 And so to some extent, this helps both me and  
7 you with understanding whether our process is actually  
8 working effectively on the Federal side to let us take  
9 that time to do that internally first so that you get a  
10 sense of how well we do it. And two, that we have some  
11 deliberative space to operate in before we bring those  
12 issues up to you.

13 The other thing I'll point out in the case of  
14 the deliberative stuff, it's not just about access and  
15 whether it's the right time for you guys to see it.  
16 There are some cases where having outside observers  
17 actually sort of suppresses the kind of things we want  
18 to come up in those meetings.

19 There are a number of folks that are involved in  
20 these things that we want to bring up potential issues,  
21 and on occasion they may be very reluctant to do that  
22 with outside observers in the room. And so we want to  
23 protect that space for them to be able to bring up those  
24 types of issues. And when we work with these on a  
25 case-by-case basis, I'm happy to talk to you about why

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1 that would be in a particular case.  
 2 MS. CONNERY: Thank you, I appreciate the  
 3 response.  
 4 Mr. Moury, what is the Department's definition  
 5 of deliberative documents, pre-decisional documents, or  
 6 deliberative meetings? Because we haven't seen an  
 7 actual definition.  
 8 MR. MOURY: I believe those are exactly what  
 9 Mr. White was talking about as far as having the ability  
 10 to go through and make a deliberative decision on what  
 11 our final conclusion is on -- I say final, but what our  
 12 action is on those documents or information prior to  
 13 providing that to the Board for their review.  
 14 MS. CONNERY: Again, I just note that the  
 15 words -- I just note that the words in the order are a  
 16 little bit different than the interpretations that  
 17 you're providing us, which seem a lot more benign than  
 18 the actual reading of the documentation.  
 19 MR. WHITE: But I think the order acknowledges  
 20 that we will need to look at these with you on a  
 21 case-by-case basis.  
 22 MS. CONNERY: I understand.  
 23 ACTING CHAIRMAN HAMILTON: I believe Mr. Santos  
 24 has a clarifying question. Mr. Santos?  
 25 MR. SANTOS: Thank you. I understand and

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1 appreciate what Mr. White was saying, and yes, we need  
 2 to have more dialogue in especially some of these gray  
 3 areas, I understand that, but one thing I'm a little bit  
 4 concerned about is regarding discussions regarding  
 5 timing, because when it comes to safety vulnerabilities,  
 6 timing might not be on our side, and some of these  
 7 processes, as you know, take a long time. Approval of  
 8 DSAs, and all that process. And if our staff has  
 9 already identified a vulnerability, I hope we can find a  
 10 way to provide timely information to the Secretary of  
 11 Energy and the public as opposed to being caught up in  
 12 the formalities and the timing of processes or waiting  
 13 for final approvals before we can communicate what the  
 14 issues are. I just want to take that up.  
 15 ACTING CHAIRMAN HAMILTON: I didn't hear a  
 16 question.  
 17 MR. SANTOS: No, I was making a statement  
 18 following his statement regarding that the issues are  
 19 timing.  
 20 ACTING CHAIRMAN HAMILTON: Thank you,  
 21 Mr. Santos.  
 22 MR. MOURY: Mr. Santos, I just want to make sure  
 23 that you understand that that's consistent with our  
 24 thoughts as well, and if you have an issue, if your  
 25 Board, if the staff has an issue, we would like to hear

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1 about that as soon as possible.  
 2 MR. SANTOS: Thank you. The issue comes -- we  
 3 want to do completed independent oversight work. We  
 4 don't want to be necessarily throwing out  
 5 vulnerabilities that haven't been fully vetted, and  
 6 that's where we get into this issue of information. At  
 7 what point do we have enough of an analysis that can  
 8 support the conclusions or not. And we don't want to  
 9 start sending communications on potential  
 10 vulnerabilities that if we would have had access to the  
 11 information it turned out to be an, oh, never mind, as  
 12 opposed to it's a real issue. Do you understand what  
 13 I'm saying?  
 14 MR. WHITE: Yes. And I would actually say  
 15 that's sort of mirrored on the Department side as well,  
 16 because when we're looking at a potential change we  
 17 might want to make, we want a chance to deliberate on  
 18 and think about that internally before we go external  
 19 and try to explain it to you.  
 20 MR. SANTOS: Perfect. I understand.  
 21 ACTING CHAIRMAN HAMILTON: Thank you,  
 22 Mr. Santos.  
 23 Ms. Connery? I'm sorry, Ms. Roberson.  
 24 MS. ROBERSON: Thank you, Mr. Chairman. A  
 25 follow-on. I think the topic we are here discussing

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1 today is a great example of what we fear could happen if  
 2 we're talking about hazardous analysis or safety basis  
 3 as a site; and that is, we didn't talk about it, you  
 4 guys developed it, you're now telling us what you  
 5 intended, and what you intended is not what we're  
 6 seeing.  
 7 And so you guys certainly have every right to  
 8 make your own decisions. I've been over there, I've  
 9 felt the same way. But this tradeoff is one you also  
 10 have to make, too. Eventually, you're going to have to  
 11 spend the time to interface with the Board, and later  
 12 doesn't mean easier. That's all I'm saying.  
 13 MR. WHITE: Acknowledged. And if there's a case  
 14 where you think we've got the timing that is not in our  
 15 mutual interest, I'm fine with that and open to  
 16 discussing that with you.  
 17 MS. ROBERSON: Thank you, sir.  
 18 MR. MOURY: And I would also say that  
 19 specifically applies to design and construction  
 20 activities, because your goal as well as ours is to  
 21 identify safety issues and identify, you know, the  
 22 necessary safety controls as early in the process as  
 23 possible. So that's a perfect example of the time when  
 24 we need to talk about the appropriate time for us to get  
 25 together and have these discussions.

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1 MS. ROBERSON: Thank you.

2 ACTING CHAIRMAN HAMILTON: Board Member Connery

3 has the last line of inquiry. Ms. Connery?

4 MS. CONNERY: And just before I go into that, I

5 would say that orders and directives are as important as

6 design and construction, because they govern how it is

7 that you're going to regulate. So our input to your

8 staff in a timely manner helps them do their job. Just

9 a point.

10 So my last question is a little bit broad, and I

11 know at one point, Mr. Moury, you said you didn't want

12 to talk about 10 CFR 830 because it's in rulemaking

13 right now and thus is not the subject of this, but I do

14 notice a trend, and that's what I want to talk about at

15 the moment.

16 The Board has been a part of the Department's

17 overall safety framework for nearly 30 years. During

18 that time, the Board and the Department have

19 collaborated to make a number of safety improvements to

20 defense nuclear facilities that have otherwise alluded

21 the Department's internal mechanism for safety

22 oversight. You were both a part of a number of those

23 improvements when you were on our side of the table.

24 What I'm seeing is a trend to change the way the

25 Department is managing safety across the board. Not

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1 just with the Interface Order, but also with proposed

2 changes to 10 CFR 830, the Federal Rule for Nuclear

3 Safety Management, and its associated documents. I've

4 heard these approaches described as a graded approach,

5 or where you want to put more effort as a risk-based

6 approach.

7 Mr. Moury, is the Department fundamentally

8 changing its approach to safety? If so, can you

9 describe that change?

10 MR. MOURY: No, we are not changing our

11 fundamental approach to safety. You know, as I

12 mentioned, I was here for 18 years. I spent seven years

13 over at the Department. I didn't change my colors

14 instantaneously and think that it was necessary to make

15 drastic changes over in the Department of Energy in

16 their approach to the safety management. I have found a

17 group of individuals over there who are very like-minded

18 with the Board.

19 So no, there is no attempt to change our process

20 for safety management. It is a very robust process.

21 Much more robust than when I first began here at the

22 Defense Board. So we continue to provide that, you

23 know, consistent with our -- or it consists of

24 directives and it consists of rules that are

25 enforceable. We have the independent oversight process,

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1 we have line management oversight process, those all

2 remain the same. So no, we are not changing our

3 process.

4 MS. CONNERY: Well, I appreciate that. I don't

5 have the same feeling, again, seeing some of the changes

6 that were made, seeing the IPT process, cutting the

7 Board out of some of those rulemaking decisions, some of

8 the implications that we see with 830. So I just want

9 to make sure that you can be confident that you will be

10 able to provide for the safety of the workers, the

11 public, and the environment while you roll back some of

12 the provisions through rulemaking and at the same time

13 seek to limit the oversight role of the Board.

14 MR. MOURY: My office as the Office of

15 Environment, Health, Safety and Security, is responsible

16 for policy, okay? We are the advocates for policy to

17 ensure that we develop effective policy that allows the

18 Department to complete its mission while remaining safe

19 and secure, and we take that very seriously.

20 So any belief that we are rolling back our

21 position on safety and security is not true. We are not

22 doing that. What we are doing is trying to make sure

23 that the changes that we make are effective,

24 implementable and allow our line organizations to

25 complete their missions in a successful manner as

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1 required by our taxpayers and that's how we are being

2 held accountable, as the Deputy Secretary mentioned, but

3 still being safe and secure.

4 MS. CONNERY: I would like to ask Ms. Roberson

5 her view since she also occupied both spaces, both here

6 for a decade and at the Department for more than a

7 decade.

8 MS. ROBERSON: Should I go over there? Thank

9 you, Ms. Connery. I'll be very brief, and what I will

10 say to you is my -- I expect to make a closing

11 statement, and I will go toward that. The one thing I

12 would say is I am always reminded that the Department is

13 the line manager and they're responsible for executing

14 programs. And the Congress is very clear that the

15 Board's primary function is to make sure that they do

16 not become complacent in the execution of safety.

17 And I think with some of these changes, it's

18 very important for the Board to keep that at the

19 forefront as it evaluates its view on the number of

20 changes that are being executed today in the arena of

21 nuclear safety.

22 ACTING CHAIRMAN HAMILTON: Mr. Santos?

23 MR. SANTOS: I just want to add that at the end

24 of the day, I just hope we have a transparent and

25 continued dialogue, and similarly, that there's

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1 differences in interpretations of enabling statutes, I  
2 see there will be also difference in interpretation of  
3 whether or not significant changes are happening to the  
4 long-standing approach to nuclear safety, and I look  
5 forward to those processes to provide my own views and  
6 comment at the appropriate time.

7 ACTING CHAIRMAN HAMILTON: Thank you. We are at  
8 the conclusion of session two. Do the Board members  
9 have any final questions or comments for session two?

10 Mr. Santos?

11 MR. SANTOS: No final questions.

12 ACTING CHAIRMAN HAMILTON: Ms. Roberson?

13 MS. ROBERSON: No final questions, Mr. Chair.

14 ACTING CHAIRMAN HAMILTON: And Ms. Connery?

15 MS. CONNERY: No final questions, I would just  
16 like to thank Mr. Moury and Mr. White for taking the  
17 abuse from across the aisle.

18 ACTING CHAIRMAN HAMILTON: So thank you for  
19 being here. Thank you very much. We are -- you are  
20 excused, and we are going to take about a seven-minute  
21 break, and then we will resume at 20 minutes to the hour  
22 by that clock to have the public comments session.  
23 Thank you.

24 (Whereupon, there was a recess in the  
25 proceedings.)

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1 ACTING CHAIRMAN HAMILTON: This is session  
2 three. At this time I will turn over the proceedings to  
3 our acting general counsel, Ms. Casey Blaine, for the  
4 public comment period. Ms. Blaine?

5 MS. BLAINE: Thank you, Mr. Hamilton. At this  
6 time, the Board would like to provide an opportunity for  
7 comments from interested members of the public. A list  
8 of those speakers who have contacted the Board is posted  
9 at the entrance to this room. We have generally listed  
10 the speakers in the order in which they contacted us, or  
11 if possible when they wish to speak. I will call the  
12 speakers in this order and ask the speakers to state  
13 their name and affiliation before their comments.

14 There is also a sign-up sheet at the entrance of  
15 this room with a sign-up sheet for members of the public  
16 who wish to make comments but did not have an  
17 opportunity to notify us ahead of time. They will  
18 follow those who have already registered in the order in  
19 which they signed up.

20 To give everyone wishing to make a comment equal  
21 opportunity, we would ask that speakers limit their  
22 original comments to five minutes. I will provide  
23 notice at four and four and a half minutes that your  
24 time is about to expire. Remarks should be limited to  
25 comments, technical information, or data concerning the

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1 subject of this public hearing. The Board members may  
2 question anyone providing comments to the extent deemed  
3 appropriate.

4 The first speaker this afternoon is a former  
5 Board member, the Honorable Jack Crawford.

6 Mr. Crawford?

7 MR. CRAWFORD: What's that?

8 MS. BLAINE: You may proceed with your  
9 statement.

10 ACTING CHAIRMAN HAMILTON: Go ahead,  
11 Mr. Crawford, you're up.

12 MR. CRAWFORD: Okay. You've got my list of  
13 questions, but you should have a copy. I handed the  
14 gentleman here, five.

15 Mr. Chairman, I came here with five questions as  
16 a former member of the Board. I would like to mention  
17 first the basis educationally and experience on which I  
18 ask these questions. I went to the Naval Academy,  
19 graduated; I then went to MIT where I got a degree, MS  
20 degree in nuclear physics; and so I would like to  
21 address these questions to the same -- with the basis on  
22 which I ask.

23 I'll go to the last two. Bear with me, I've got  
24 to --

25 ACTING CHAIRMAN HAMILTON: So what we can do,

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1 Mr. Crawford, is we can submit your list of questions  
2 for the record and they will be a part of this hearing.

3 MR. CRAWFORD: What I would like to do is  
4 discuss two items, two questions, and you can read them  
5 in. The first one is the directive that Congress gave  
6 to the Board when it established the Board. It said the  
7 Board is directed to raise the level of competence in  
8 DOE substantially.

9 My question is, did they do that? I know that  
10 they didn't, at least in the early years, because my  
11 last year, we tried hard to address that question. I  
12 caused a report to be prepared, or the staff to develop  
13 a report, there was an outside group, the Board staff,  
14 and representatives of Naval reactors, retired, and also  
15 industrial groups, and they compiled the report, and the  
16 report -- it's in the Board's files, because I've gotten  
17 a recall, as DNFSB Tech-10, the DOE's Technical Adequacy  
18 Program.

19 And so my questions today were to be to direct  
20 that, have they enacted it, has the Board put the heat  
21 to DOE and made them raise the level of technical  
22 competence? That's the first one.

23 More recently, the Congress had a group examine  
24 the whole nuclear weapons enterprises, they referred to  
25 it. It was called the Augustine -- the Augustine-Mies

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1 report. Now the initial report -- and I follow the  
 2 Board, what the Board does, fairly extensively. The  
 3 initial -- the initial report said that the Naval  
 4 Reactors Program was world class. I waited to see that  
 5 and read that in the final report. Nothing about it.  
 6 Nothing like that. It compared the Naval Reactors  
 7 Program with other programs, but no words that would  
 8 result in a raising of the adequacy of the Board.  
 9 Now those are my two questions. What happened?  
 10 ACTING CHAIRMAN HAMILTON: And thank you. We'll  
 11 submit all of your questions for the record.  
 12 MR. CRAWFORD: Okay.  
 13 ACTING CHAIRMAN HAMILTON: And we're very  
 14 familiar.  
 15 MR. CRAWFORD: These ones in here.  
 16 ACTING CHAIRMAN HAMILTON: We're very familiar  
 17 with the Augustine-Mies report, as well as the tech  
 18 report that you prepared, and we want to thank you for  
 19 raising those questions for our evaluation, and we also  
 20 want to thank you --  
 21 MR. CRAWFORD: And I can say so far as I can  
 22 observe, this is the first time that I've ever seen the  
 23 public invited into a discussion between the DOE -- I  
 24 mean, if you wanted to get the issue of the technical  
 25 adequacy, there was nobody to listen. I've written to

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1 the President, told him the story, the dilemma we was  
 2 in, no response. One time, Vice President Cheney had  
 3 arranged me a meeting with the --  
 4 MS. BLAINE: You have one minute remaining.  
 5 MR. CRAWFORD: -- nothing happened.  
 6 ACTING CHAIRMAN HAMILTON: Well, thank you. We  
 7 open these to the public routinely now.  
 8 MR. CRAWFORD: It's wonderful.  
 9 ACTING CHAIRMAN HAMILTON: So this is nothing  
 10 new to me since I've been here. And again, we're going  
 11 to enter these into the record. We're very familiar  
 12 with the topics you brought up, and we thank you for  
 13 being here.  
 14 MR. CRAWFORD: Thank you for listening.  
 15 ACTING CHAIRMAN HAMILTON: And your support.  
 16 You're certainly welcome.  
 17 Ms. Blaine?  
 18 MS. BLAINE: Thank you, Mr. Crawford, and your  
 19 questions have been entered into the record.  
 20 The next speaker that we have is Ms. Kathy  
 21 Crandall Robinson.  
 22 MS. CRANDALL ROBINSON: Thank you very much. I  
 23 really appreciate being here. I've learned a lot this  
 24 morning, and I'm happy to give these comments.  
 25 My name is Kathy Crandall Robinson. I'm

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1 speaking on behalf of Tri-Valley CAREs, this is  
 2 Tri-Valley Communities Against a Radioactive  
 3 Environment.  
 4 Tri-Valley CAREs was founded in 1983 by  
 5 concerned neighbors living near Lawrence Livermore  
 6 National Laboratory, and has worked for 35 years as a  
 7 watchdog monitoring the nuclear weapons and waste  
 8 cleanup activities throughout the U.S. nuclear weapons  
 9 complex.  
 10 I am also dual-hatted, delivering comments today  
 11 on behalf of the broader Alliance for Nuclear  
 12 Accountability. ANA is a national network of more than  
 13 30 organizations that addresses nuclear weapons  
 14 production and waste cleanup issues. ANA was formed  
 15 just over 30 years ago, about the same time as the  
 16 Safety Board.  
 17 Tri-Valley CAREs and ANA are deeply concerned  
 18 that this order will constrain crucial oversight  
 19 activities at the Safety Board, and endanger public and  
 20 worker health and safety. Degradation of the Safety  
 21 Board access and authority threatens to send us  
 22 backwards, returning us to the days when major accidents  
 23 and spills and releases were considered routine, and  
 24 justified in the service of the mentality of production  
 25 first and safety second, at best.

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1 In the two decades before DNFSB was created,  
 2 Livermore Lab suffered major Tritium accidents,  
 3 plutonium fires, a burst glovebox, a nuclear  
 4 criticality, and numerous other mishaps. Livermore is  
 5 neither unique nor the site with the worst nuclear  
 6 accidents in the complex.  
 7 The Safety Board has played a vital role in  
 8 protecting public health and safety in carrying out its  
 9 mission to provide independent analysis, advice and  
 10 recommendations to the Department of Energy, and I'm  
 11 going to submit, along with my written comments, a few  
 12 little highlights of some of the great things that DNFSB  
 13 has done.  
 14 I know that the stakeholders and the community  
 15 leaders of both ANA and Tri-Valley CAREs have very high  
 16 praise for the DNFSB. This is not the time when  
 17 concerns about the nuclear weapons complex facilities is  
 18 shrinking. We have aging facilities, we have facilities  
 19 that are operating with serious concerns, and we have a  
 20 new drive for production that may introduce some novel  
 21 problems. And I think specifically of some of the  
 22 drives for plutonium pit production, 80 pits by 2030 is  
 23 the goal of the nuclear posture review, and you're  
 24 seeing plans to greatly expand at New Mexico, as well as  
 25 new plans at Savannah River.

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1 We are concerned about the limitations imposed  
2 by the Order 140.1, and that they will hinder the safety  
3 Board's effectiveness to fully investigate and continue  
4 with sound oversight. We believe that the order is at  
5 odds with the enabling legislation that states, as this  
6 was pointed out earlier, "The Secretary of Energy shall  
7 fully cooperate with the Board and provide the Board  
8 with ready access to such facilities and performance" --  
9 I'm so sorry, just one second -- "such personnel and  
10 information as the Board considers necessary to carry  
11 out its responsibilities."

12 We are particularly concerned about three  
13 constraints.

14 MS. BLAINE: You have one minute remaining.

15 MS. CRANDALL ROBINSON: Okay, I'm going to go  
16 fast, then. The first is the Hazard Category 3  
17 facilities, and these were discussed and the interaction  
18 of that with the -- what happens within the site, and I  
19 just wanted to point out, particularly, that the  
20 Livermore site, the public is so close to the facilities  
21 that they are closer in many cases than collocated  
22 workers.

23 MS. BLAINE: Thirty seconds remaining.

24 MS. CRANDALL ROBINSON: I am going to skip  
25 through very quickly. So it's the access to facilities,

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1 the category three, and this is very much related to  
2 whether we include workers and the public. We think  
3 that they are absolutely linked. You cannot separate  
4 them.

5 The pre-decisional documents, we don't know what  
6 that means, but we're very concerned, especially when it  
7 comes to the construction issues that were mentioned,  
8 but all the others.

9 And finally --

10 MS. BLAINE: Would you please conclude your  
11 statement, Ms. Crandall Robinson.

12 MS. CRANDALL ROBINSON: Yes, I will conclude. I  
13 will conclude by saying that the final thing is the  
14 access to contractors and work with the site workers,  
15 and that we have asked the Secretary of Energy to revoke  
16 or at least hold in abeyance this rule, and very much  
17 thank the DNFSB and rely on your continued diligence.

18 MS. BLAINE: Thank you. If you have copies of  
19 the documents that you would like to submit for the  
20 record, I have an associate who will come and retrieve  
21 them from you. Thank you.

22 The next speaker that we have is Seth  
23 Kirshenberg.

24 MR. KIRSHENBERG: Great. Thank you very much.  
25 First, there's a lot of irony here, that you are holding

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1 this hearing informing the public about this DOE order,  
2 and I want to thank you very much for actually holding  
3 this hearing.

4 My name is Seth Kirshenberg, I'm the executive  
5 director of Communities Alliance, we represent the local  
6 governments and communities around the various  
7 Department of Energy facilities, and we submitted a  
8 letter that we sent to the Secretary of Energy today on  
9 the record that basically asks them to pause this  
10 particular rule.

11 ECA's goal is to ensure that DOE and NNSA  
12 complete their jobs effectively, efficiently and safely.  
13 We believe that the order does not accomplish these  
14 objectives, and today you highlighted many of the  
15 concerns that the communities have, and we really  
16 appreciate it. I learned a lot today, and I think the  
17 communities learned a lot today.

18 In our formal letter, when we asked that it be  
19 paused, we identified some key issues. One is, you've  
20 got to involve the community. I mean, that is a key  
21 issue when developing any of these policies, especially  
22 when you talk about public health and safety. But more  
23 importantly, I think that, you know, as you talked about  
24 before, one of the key things is involving DNFSB. Your  
25 working relationship is the reason why the processes can

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1 move forward, either clearly or not. And them  
2 understanding those things, and them understanding how  
3 you actually work together are actually very -- it's  
4 clear.

5 I, who have seen the Department of Energy  
6 litigate cases, fight against regulation, and then learn  
7 over and over and over again that by working with the  
8 regulators and oversight that they create these  
9 efficiencies, they create processes that actually work.  
10 What's interesting, we became aware of this order  
11 because obviously a lot of different people started  
12 raising concerns. We started getting questions about  
13 it, not because DOE actually said, hey, we've got this  
14 new order that impacts, and they said health and safety  
15 of the community, which they're trying to focus on, and  
16 we agree with you related to the worker issues as well.

17 You know, since DOE doesn't have a formal  
18 regulator related to the issues that you all oversee,  
19 DNFSB, to us, plays a critical role. We've seen that  
20 over time. The information that you provide to  
21 communities and to the public is very key for us.

22 For this reason, we're concerned about 140.1.  
23 ECA believes the new chain of command, and it was  
24 interesting to hear Mr. White talk about, well, when I'm  
25 briefing them, this is what I'm telling them to do. We

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1 all know of anybody who has ever worked with Government  
 2 that the next person reads it and says, that's not what  
 3 this says, here's a pre-decisional information, I'm not  
 4 supposed to give this to you.  
 5 Pre-decisional is very defined in FOIA and other  
 6 types of things about access and information that the  
 7 Department actually discloses to third parties. And it  
 8 becomes very clear that we're going to have concerns.  
 9 The other thing that you have is that NNSA, EM,  
 10 Office of Science, everybody else, they implement these  
 11 rules differently, and they are going to implement them  
 12 differently. And when you have a site like Oak Ridge  
 13 that has actually one landlord with three major  
 14 operators, how are they all going to implement and  
 15 require and respond to all of you?  
 16 The "one voice" comment that they made in the  
 17 order means lessening of diversity of opinions to us  
 18 that may exist between DOE personnel and DOE  
 19 contractors. And we all know that if you've worked  
 20 within the system, that people have different ideas on  
 21 different information as we go forward.  
 22 We appreciate the desire to save costs,  
 23 streamline processes, maximize efficiencies. We want to  
 24 accomplish the same goal. In the past, we have sent  
 25 comments to DNFSB about improving those particular

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1 processes, and we will continue to do that as well, but  
 2 implementing an order that limits interaction --  
 3 MS. BLAINE: One minute remaining.  
 4 MR. KIRSHENBERG: -- and opportunity for  
 5 oversight, will not achieve these objectives. We urge  
 6 DOE to pause this.  
 7 The hearing really raised more questions for me  
 8 and confusion, actually, and I'm someone who actually  
 9 follows these things and works on them regularly. And  
 10 so, you know, we want more information from the  
 11 Department of Energy on the worker safety issues, the  
 12 oversight of sites like WIPP. How could you not have  
 13 oversight of --  
 14 MS. BLAINE: Thirty seconds remaining.  
 15 MR. KIRSHENBERG: -- some of the most critical  
 16 important infrastructure in the Department of Energy.  
 17 And so we actually are going to be asking the Department  
 18 the same things.  
 19 You know, I just want to close by just saying  
 20 thank you very much for holding this hearing. This has  
 21 been very informative, and we look forward to working  
 22 with you in the future. Thank you.  
 23 MS. BLAINE: Thank you for your statement,  
 24 Mr. Kirshenberg. If you have any documents you would  
 25 like to submit for the record, please give them to my

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1 associate.  
 2 MR. KIRSHENBERG: Thank you.  
 3 MS. BLAINE: Thank you. Are there any other  
 4 members of the public who wish to speak at this time?  
 5 (No response.)  
 6 MS. BLAINE: Seeing none, I would like to thank  
 7 each of our public commenters for speaking this  
 8 afternoon, and at this time, I will turn the proceedings  
 9 back over to Acting Chairman Hamilton for closing  
 10 remarks.  
 11 ACTING CHAIRMAN HAMILTON: Thank you,  
 12 Ms. Blaine. I will now turn to my fellow Board members  
 13 for their closing remarks and then we will end with my  
 14 own closing remarks.  
 15 Ms. Roberson?  
 16 MS. ROBERSON: Thank you, Mr. Chairman. I want  
 17 to thank my fellow Board members, the Deputy Secretary  
 18 and other Departmental representatives that were here  
 19 today, our staff participants, and most importantly the  
 20 public here and online, for your support and  
 21 participation in this hearing.  
 22 As has been noted, this is the first in a series  
 23 of hearings on this topic. Hopefully to be followed  
 24 soon with a focus on execution of DOE's Order 140.1 at  
 25 Environmental Management, Defense Nuclear Facilities and

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1 the Science Defense Nuclear Facilities. This serves as  
 2 our first real opportunity to critically understand the  
 3 intent and goals that the Department and its line  
 4 elements have sought in redefining its relationship with  
 5 the Board and the Board's execution of its oversight  
 6 authorities.  
 7 I and fellow Board members are very much aware  
 8 that about every two years, there's a new or revised  
 9 study that advises the Department that it is spending  
 10 too much money in responding to the Board and the Board  
 11 staff and generally advises the Department to shore up  
 12 inhouse control to expenditures and responses to both  
 13 informal and formal communication from the Board or the  
 14 Board staff. And I've recognized their right to manage  
 15 their internal business.  
 16 Board members now and in the past have long been  
 17 concerned about the DOE application of Board-recommended  
 18 actions being applied across the entire Department. The  
 19 Board provides oversight and insights to the Secretary  
 20 specific to defense nuclear facilities. The application  
 21 of those standards to other DOE applications or  
 22 activities is not the Board overstepping their  
 23 authority, those have been DOE internal decisions.  
 24 We recognize the management challenge when you  
 25 have such a diverse portfolio for the Board, but the



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1 Board has previously actually written to the Department  
2 expressing its concern that the application of the same  
3 expected high safety standards for defense nuclear  
4 facilities may be an overburden for nondefense nuclear  
5 facilities.

6 The Department elements have to their credit  
7 built in avenues like waivers or exemption processes to  
8 allow acceptance of different requirements with  
9 thoughtful reasoning, but those are rarely used, and I  
10 do not know why, because the alternative we now see may  
11 need to -- may lead to normalizing safety requirements  
12 for defense nuclear facilities with non-defense nuclear  
13 facilities.

14 The Board and DOE have had a lively relationship  
15 since the beginning, and I think that has been and can  
16 be very healthy as long as the relationship is focused  
17 on technical debate and technical perfection, as former  
18 Board member Crawford highlighted, and ensures and is  
19 focused on how the public is protected in the execution  
20 of the missions essential to our national defense. And  
21 there is no analysis that will silence the Board. Even  
22 if it's not this Board.

23 I am very concerned with the Department's stance  
24 regarding the Board's authority to evaluate, advise,  
25 recommend and speak to matters involving workers,

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1 collocated workers, and public health and safety, and be  
2 assured the Department will treat Board communications  
3 with the due consideration it deserves.

4 We all understand that the Department is a  
5 cannibal for managing the integration of safety at its  
6 defense nuclear facilities. The Board provides  
7 independent oversight. At the end of the day, it is the  
8 Secretary's decision in communications regarding the  
9 Department's commitment to safety that prevails with its  
10 workforce, but accountability and transparency must be  
11 hand in hand.

12 The Department has decided to independently  
13 invoke its interpretation of the Board's enabling  
14 statute, and even though the Board already takes issue  
15 with some elements of the Department's interpretations,  
16 we have not yet received any formal communication  
17 regarding why it has taken those positions, and even  
18 more importantly, what are the new requirements the  
19 Department desires to impose upon oversight?

20 This is unfortunate, and leaves too many  
21 important questions regarding the Department's intent  
22 toward independent oversight to speculation. I hope the  
23 Board and the Department can take actions to address  
24 this very soon. Thank you very much.

25 ACTING CHAIRMAN HAMILTON: Thank you,

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1 Ms. Roberson.

2 Board Member Santos?

3 MR. SANTOS: Thank you, acting Chairman. First  
4 I want to thank all the participants in today's hearing,  
5 especially all the DNFSB staff and support personnel  
6 that worked very hard in the preparation and  
7 coordination of this hearing. So, thank you to all of  
8 you.

9 In addition to Order 140.1, it is important to  
10 note that the Department is systematically changing key  
11 aspects of its long-standing approach to nuclear safety  
12 and its views of the role of independent oversight. And  
13 while these changes are taking place, the Department is  
14 facing tremendous pressures, challenges and issues  
15 throughout the defense nuclear complex, including but  
16 not limited to aging infrastructure issues, deferred  
17 maintenance issues, human capital shortfalls in critical  
18 safety programs, technology and construction issues and  
19 delays, conduct of operation challenges, events, upsets  
20 and incidents, and the need to execute upcoming  
21 high-risk work such as plutonium remediation work at the  
22 Savannah River Site and at Hanford.

23 Given all these issues, challenges, pressures  
24 and systematic changes, I consider that this is not an  
25 opportune time to be altering aspects of the role of

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1 independent oversight that for many years have helped  
2 serve as a strong pillar relied on for providing  
3 adequate protection of the American people, including  
4 the American patriots that work throughout the defense  
5 nuclear complex.

6 It is not clear to me what gives DOE confidence  
7 that safety would not be compromised. These are the  
8 type of issues I will continue to explore.

9 DOE has a safety infrastructure that was built  
10 over many years, with a lot of technical study,  
11 expertise, lessons learned, and best practices. It is  
12 my strong opinion that the DOE enterprise needs to  
13 resist the pressures to make significant and hasty  
14 changes to it. I encourage the DOE leadership to be  
15 skeptical of any changes to its safety approach, and to  
16 ensure that erosion of safety is not disguised as  
17 promised improvements, promised cost savings, or to  
18 quickly buy into shallow statements that failure to  
19 deliver on mission is due to adherence to safety.

20 I encourage DOE to continue its strong  
21 relationship with the Board and to always remain open to  
22 the Board's independent analysis, advice, and  
23 recommendations. Now is not the time to be limiting  
24 interactions with the Board. I repeat, now is not the  
25 time to be limiting interactions with the Board.

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1 Fellow Board members, as you all know, we're  
2 facing challenging times at the Board and we need to be  
3 even more vigilant and conduct our thorough independent  
4 safety oversight work in an effective and timely manner,  
5 as all these changes are taking effect right now. The  
6 American people deserve it.

7 This concludes my statement. Thank you.

8 ACTING CHAIRMAN HAMILTON: Thank you,  
9 Mr. Santos.

10 Board Member Connery?

11 MS. CONNERY: Thank you, Mr. Chairman. I would  
12 like to thank my fellow Board members and associate  
13 myself with the closing remarks of Ms. Roberson and  
14 Mr. Santos, I thought those were excellent and eloquent  
15 remarks.

16 I would like to thank the public for tuning in  
17 today or showing up, and particularly those who sought  
18 to engage with us with public remarks.

19 I also want to thank DOE, you have done the  
20 impossible, you have brought the Board together in unity  
21 for the first time in a while, so congratulations on  
22 that. And to echo some of the themes that I've heard  
23 from my fellow Board members and from some of the  
24 public, you know, these aren't fantastic times to be  
25 reconsidering how we do safety. We are in a situation

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1 in which there's aging infrastructure, where there is a  
2 changing workforce, where there's increased and  
3 important mission at NNSA, and there's more complex  
4 mission left for EM to do. So this seems to be the  
5 perfect storm for accidents to happen and this is a time  
6 where we should be doubling down on our efforts on  
7 nuclear safety.

8 When I was speaking to the Department of  
9 Energy's facility rep gathering in Las Vegas last May, I  
10 was asked during Q&A what my reaction was to the  
11 Interface Order. My reply was, visceral. This seemed  
12 to catch some of my colleagues from the Department by  
13 surprise. Based on the testimony we heard today, the  
14 order in question seems to be intended by the Department  
15 to be benign instruction to the field on how to  
16 facilitate Board interaction with sites and contractors.  
17 I don't feel it's that benign. I didn't feel it when I  
18 read it and I certainly didn't get confidence in that  
19 with the answers that I heard today.

20 To begin with, any interface document dealing  
21 with the rules of the road regarding our two  
22 organizations should at the very least involve our two  
23 organizations. We are but a small, technical  
24 organization, with a few dozen technical staff members,  
25 and the defense nuclear complex has tens of thousands of

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1 workers. I don't know why we strike fear into the heart  
2 of the Department, and I don't understand why they  
3 consider us to be onerous. If it were up to me, I'd  
4 double our staff and still find us inadequate.

5 I also find it curious that the Department wants  
6 to prevent access to pre-decisional documents. While I  
7 understand that they have an interest in making sure  
8 that such documents do not go public, we are obliged to  
9 obey the markings that the Department puts on those  
10 documents. Even the weekly information that comes from  
11 our resident inspectors is vetted by the Department to  
12 avoid information becoming public before its time.

13 Congress instructed the Department and the Board  
14 to interact sooner in designing construction efforts to  
15 avoid us from weighing in after the fact. The same  
16 should be true of orders and regulations that deal with  
17 safety. Asking for somebody's opinion after a decision  
18 has been made by definition leads to an uninformed  
19 decision.

20 Finally, in my career, which began at the  
21 Department of Energy, I always heard the words, "Mission  
22 first, people always," regardless of the administration.  
23 And I believe that that is a core value and principle of  
24 the Department, and yet -- and yet, here we are with the  
25 Department defining for the Board that public health and

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1 safety, and our consideration in determining adequate  
2 protection, includes only individuals located beyond the  
3 site boundary of DOE sites with DOE defense nuclear  
4 facilities.

5 At Savannah River, an office worker who didn't  
6 sign up for hazardous work duty, but works in the range  
7 of the tritium facility, at Los Alamos, a worker  
8 building war reserve pits to build our deterrent, at  
9 Pantex, perhaps three generations of great Americans all  
10 working at the plant. They are not our concern  
11 according to this document. Yet they are the mothers,  
12 the brothers, the breadwinners and the soccer coaches in  
13 the communities of Aiken, Los Alamos and Amarillo. They  
14 are the public.

15 I know our staff will continue to identify  
16 safety concerns that could impact workers at the site,  
17 so-called collocated workers within the boundaries of  
18 the site, and the general public. And I know that the  
19 Board will keep communicating. I hope that the  
20 Department will continue listening and responding  
21 appropriately. Thank you.

22 ACTING CHAIRMAN HAMILTON: Thank you,  
23 Ms. Connery.

24 I will now offer my own personal closing  
25 remarks, and I will borrow from Ms. Connery's comment

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1 that you had that this order has, in fact, united the  
 2 Board.  
 3 We've covered a lot of material today, but to  
 4 me, the primary question is, is DOE Order 140.1  
 5 consistent with the Atomic Energy Act? In my view, it  
 6 is not, for many obvious reasons. Among them, the order  
 7 claims to exempt DNFSB oversight from Hazard Category 3  
 8 in radiological facilities, but hazard categories are a  
 9 DOE construct, nowhere articulated in the Atomic Energy  
 10 Act.  
 11 The order claims to limit the adequate  
 12 protection of the public health and safety to people  
 13 beyond the site boundary of a defense nuclear facility,  
 14 thereby excluding workers' safety from the Board's  
 15 oversight. This cutout is nowhere articulated in the  
 16 Atomic Energy Act.  
 17 The order claims to exempt the Board's oversight  
 18 in situations where the Department of Energy determines  
 19 that the adequate protection of the public health and  
 20 safety is not adversely affected, thereby making the  
 21 Secretary of Energy the arbiter, a specious and circular  
 22 argument given that the Atomic Energy Act directs the  
 23 Board to opine and offer recommendations on that very  
 24 question.  
 25 Beyond this, a curious pair of secondary

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1 questions for me is where this overreach originated, and  
 2 whether the senior political leaders of the Department  
 3 were made fully aware of what the order attempts to  
 4 claim. I have little inside on the Department's  
 5 internal activities which resulted in this order, but I  
 6 do know these facts: Solid evidence exists that this  
 7 order has been simmering inside the Department for over  
 8 a decade, spanning three different Presidential  
 9 administrations.  
 10 I know that the order was pushed through without  
 11 formal comments from the Board, and with only a single  
 12 informal input in a cautionary email provided to me by  
 13 the Administrator of the NNSA just one week before it  
 14 was approved. And I know that the Administrator had not  
 15 been on the job three months when all of this happened.  
 16 For me, this set of facts is enough to postulate  
 17 that the Department of Energy DOE Order 140.1 is a  
 18 product detached from any agenda of the current or any  
 19 previous Presidential administration; rather, it was a  
 20 long-term initiative of the professional DOE staff who  
 21 jumped on this opportunity to get it approved. All that  
 22 said, the responsibility for its approval lies with the  
 23 Department's senior political leadership, and it is they  
 24 who must now deal with the concerns and questions that  
 25 have been discussed today.

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1 This concludes my personal closing remarks. I  
 2 would now like to again thank the witnesses and the  
 3 organizations and speakers today for supporting this  
 4 hearing. I also want to thank all those who attended,  
 5 either in person or via the Internet. Our goal for this  
 6 hearing was to gather information on the objectives of  
 7 DOE Order 140.1, interface with the Defense Nuclear  
 8 Facilities Safety Board, the Board's access to  
 9 facilities, information and personnel, and the potential  
 10 impacts to the Board's Resident Inspector Program.  
 11 This was the first in a series of up to three  
 12 hearings regarding 140.1. The next hearing will be at a  
 13 date to be determined later by the Board. This morning  
 14 we heard testimony from the Deputy Secretary of Energy,  
 15 the Associate Under Secretary for Environmental Health,  
 16 Safety and Security, and the Chief of Staff and  
 17 Associated Principal Deputy Administrator for NNSA, as  
 18 well as public comments, so thank you again for making  
 19 those comments. We appreciate it.  
 20 The Board will consider the information gathered  
 21 this morning to inform any actions that we may take  
 22 regarding these issues. Once again, I thank everyone  
 23 for participation at this hearing. The record of this  
 24 proceeding will remain open until September 28th. This  
 25 concludes the public hearing of the Defense Nuclear

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1 Facilities Safety Board. We are adjourned.  
 2 (Whereupon, at 12:16 p.m., the hearing was  
 3 adjourned.)  
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I, Sally Jo Quade, CERT, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

s/Sally Jo Quade  
SALLY JO QUADE, CERT

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