

[DOE LETTERHEAD]

July 21, 1995

Mr. John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, N.W., Suite 700
Washington, D.C. 20004

Dear Mr. Conway:

I am writing in response to your [recent letter](#) related to my appearance before the Energy and Water Subcommittee of the House Committee on Appropriations this past March.

Let me clarify at the outset that my remarks were in no way intended to characterize the Defense Nuclear Facilities Safety Board's activities as, as you paraphrase it, "counter-productive to efforts to improve health and safety." There should be no doubt that Secretary O'Leary and I fully agree that the Board has provided a strong impetus and framework for our shared effort to strengthen safety and health at the Department of Energy (DOE). It is unfortunate that my remarks -- which were made in specific response to questions asked by Congressman Fazio -- have given you a different impression.

It was not my impression at the hearing that Congressman Fazio was criticizing the Board's past practices, but rather was trying to define a path forward for management and oversight of environment, safety and health programs at DOE facilities. I have stated on many occasions, both in public and in private meetings with you and other Board members, that one weakness of the present system is that the Defense Board's statutory mandate to focus on nuclear safety skews attention and scarce resources away from other critical non-nuclear health and safety issues.

That is not the Board's fault, per se, nor is it a comment on the Board's performance. But it is an important part of the bigger policy picture that should be examined when considering the appropriate approach to regulation of the Department. As you know, the Secretary has established a Federal Advisory Committee that will provide recommendations on external regulation of health and safety at DOE facilities. Mr. Joseph DiNunno, a Defense Board member, has been an active member of this committee which is to provide a final report by December 1995.

I am disturbed by the implication in your letter that DOE would "substitute" actions to protect workers from non-nuclear risks for nuclear-related safety actions. Nothing could be farther from the truth. I have spent much of my career advocating the need for an integrated, multidisciplinary approach to the protection of workers, the public, and the environment and have sought to implement this approach in a number of initiatives in DOE's Office of Environment, Safety and Health (EH). I am convinced -- as I know you are -- that the safety of our facilities will not be assured until line managers throughout DOE and our contractor corps truly manage safety on a day-to-day basis as carefully and as assiduously as they manage the bottom line. The main focus in EH is to provide line managers with incentives, tools and models that will allow them to create the systems needed to accomplish this. Some initiatives currently underway are:

- development of a process that will allow us to track specific line program safety and rank associated risks;
- the "necessary and sufficient" process for determining applicable health and safety standards that will assure work is properly planned and that associated hazards are analyzed and controlled;

- a retooled oversight process that evaluates the effectiveness of management systems for assuring environment, safety and health protection;
- contract reform efforts that provide a means of holding contractors accountable for environment, safety and health performance;

Regarding my specific comments about the process for the Board's recommendations to the Department, I find it hard to escape the conclusion that the political penalty for rejecting a Board recommendation would be quite high. This does not imply, as you suggest, that our decisions on safety are "politically motivated." What it does reflect is that the Board's recognized expertise and the high esteem in which the Board is held establishes a heavy presumption that all Board recommendations should be accepted in their entirety. This presumption is exacerbated by the reality that the Department has not done a good job in the past of assessing the full cost and resource implications of adherence to a Board recommendation. The environment, safety and health tracking system that I mentioned is a significant part of an attempt to remedy this situation. In past practice, the time available to consider Board recommendations is largely consumed with analysis of whether and how to comply. That paradigm was not followed in responding to Board Recommendation 95-1 and will not be tolerated in the future.

I hope that this letter has better focused my remarks at the March hearing. I look forward to working with you and the other Board members on our shared goals for safety and health at DOE nuclear facilities.

Sincerely,

Tara O'Toole, M.D., M.P.H.
Assistant Secretary
Environment, Safety and Health