

June 10, 2004

Representative John J. Duncan, Jr.
United States House of Representatives
2267 Rayburn House Office Building
Washington, D.C. 20515-4202

Dear Congressman Duncan:

I am writing in response to your letter dated May 4, 2004, which forwarded a letter to you dated May 1, 2004, from your constituent, Mr. Joseph Carson. You asked that I address questions raised by Mr. Carson in his letter.

Mr. Carson asked whether the Defense Nuclear Facilities Safety Board (Board) has ever addressed how “fear of reprisal or demonstrated legal finding of reprisal against DOE safety professionals can negatively impact workplace and public health and safety in DOE’s defense nuclear facilities.” He noted that the Nuclear Regulatory Commission (NRC) takes Department of Labor determinations of unlawful reprisal very seriously, specifically for the “chilling effect” reprisal or fear of reprisal can have on safety in nuclear facilities. Mr. Carson went on to ask whether the Board has ever studied the safety culture in any DOE facilities for which it has safety oversight responsibilities.

Mr. Carson previously raised his concerns in correspondence to the Board in January 2000. The Board responded to Mr. Carson in a letter dated February 2, 2000, a copy of which is enclosed. As we informed Mr. Carson, the Board’s jurisdiction, as carefully defined by Congress in the Board’s enabling legislation reinforced by subsequent authorization bills and explained in accompanying committee reports, does not extend to investigating, adjudicating, or remediating alleged retaliations proscribed under federal law protecting whistleblowers. Congress has placed that jurisdiction elsewhere. Jurisdictional boundaries, however, do not mean that the Board is unavailable to receive and act upon reports of health or safety concerns brought to our attention by workers at the defense nuclear facilities, members of the public, or their representatives. Indeed, over the years, the Board’s annual reports provide numerous examples where health or safety matters reported to the Board by concerned individuals were investigated and, when corroborated by the Board’s technical staff, promptly remedied.

The authority of the Board extends to evaluating the underlying claims of health or safety problems and, where substantiated, ensuring appropriate remediation. When the concerns reported to us go beyond our jurisdiction, we refer the matters to appropriate federal authorities, e.g., the Office of Special Counsel, investigatory offices within DOE, or to the Department of Labor.

Mr. Carson also asked whether the Board has ever studied the safety culture in DOE facilities for which it has jurisdiction. With regard to the safety culture at defense nuclear facilities, the Board has championed DOE's development of Integrated Safety Management (ISM) to systematically identify and address health and safety matters during the planning and performance of all work. As such, ISM goes well beyond addressing issues of possible retaliation and infuses the open identification and resolution of safety concerns into every aspect of work planning, work performance, and effective feedback of lessons learned into future work. Through Recommendations 95-2 and 98-1, the Board has caused DOE to upgrade its safety management systems and routinely evaluates the status of ISM implementation throughout the DOE complex. The Board continues to focus on the safety culture within DOE. Most recently, the Board, in Recommendation 2004-1, provided DOE with recommendations to ensure effective safety oversight at defense nuclear facilities.

The Board has long recognized the fundamental importance of identifying and resolving safety issues at defense nuclear facilities in a timely manner and fostering a constructive safety culture.

Sincerely,

John T. Conway
Chairman

Enclosure

John T. Conway, Chairman
A.J. Eggenberger, Vice Chairman
Joseph J. DiNunno
John E. Mansfield
Jessie Hill Roberson

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004-2901
(202) 694-7000



February 2, 2000

Mr. Joseph P. Carson
10953 Twin Harbour Drive
Knoxville, TN 37922

Dear Mr. Carson:

This is in reply to your Electronic Mail forwarded to the Defense Nuclear Facilities Safety Board (Board) dated January 14 and 18, 2000.

Taken together, these messages outline your view of the Board's actions in the context of whistleblower protection in the Department of Energy's (DOE) nuclear weapons complex. You also asked that we confirm several of your statements about Board determinations on matters you link to whistleblower protection. And, lastly, you asked which Congressional Committees and Subcommittees have jurisdiction over the Board.

As our legal staff has discussed with you and others, the Board's jurisdiction has been carefully defined by the Congress in the Board's enabling legislation, reinforced by subsequent authorization bills, and explained in accompanying committee reports. That jurisdiction does not extend to investigating, adjudicating, or remediating alleged retaliations proscribed under federal law protecting whistleblowers. Congress has placed that jurisdiction elsewhere. Jurisdictional boundaries do not equate to or mean that the Board is not available to receive and act upon reports of health or safety concerns brought to our attention by workers within the several sites, members of the public, or their representatives. Indeed, the Board's annual reports set forth numerous examples where health or safety matters reported to the Board by concerned individuals were corroborated by the Board's technical staff and promptly remediated.

The authority of the Board extends to evaluating the underlying claims about health or safety problems and, where indicated, ensuring appropriate remediation. When the concerns reported to us go beyond our jurisdiction, we facilitate referring the matter to the appropriate federal authority--e.g., the Office of the Special Counsel, the several investigatory offices within DOE, or to the Department of Labor.

Your comparing recent Nuclear Regulatory Commission (NRC) actions dealing with whistleblower protection to Board practice serves no useful purpose. The factual predicate, namely Congressional concerns that the NRC was not providing the Atomic Energy Act protections to whistleblowers, has no legal or factual connection to the Board or its oversight function. The Board's 10-year record of responding to concerned employees and members of the public demonstrates that we

take protecting confidentiality of health or safety reports brought by DOE or contractor employees very seriously. In all instances, where confidentiality has been sought, we have aggressively honored that request to the fullest extent allowed by law. More to the point, and it is well worth repeating, our practice is to not only protect identities, but to work creatively with employees so that they do not need to provide us with any information that would identify them. Our overriding interest is to obtain sufficient information to independently corroborate the health or safety concerns that have been identified to us. Additionally, we urge concerned individuals to seek legal assistance so that they are fully advised on available protections for whistleblowers and what they must do to qualify for those protections. We do this with each individual reporting health or safety matters to us. We have developed this practice over the last 10 years and we have found it responsive to the several federal interests that converge upon matters within the Board's jurisdiction.

More importantly regarding your concerns, the Board has championed DOE's development of Integrated Safety Management (ISM) to systematically identify and address health and safety matters during the planning and performance of all work. As such, ISM goes well beyond addressing symptomatic issues of possible retaliation and infuses the open identification and resolution of safety concerns into every aspect of work planning, work performance, and the effective feedback of lessons learned. Through Board Recommendations 95-2 and 98-1, the Board has caused the DOE to upgrade its safety basis management systems. These initiatives have effectively addressed underlying principles to ensure the comprehensive identification of hazards associated with the work and ensure that appropriate controls are identified and implemented. The five functions of ISM mandate full participation of all individuals participating in the work, particularly those individuals best qualified to identify health and safety concerns. Our experience demonstrates that ISM offers the most effective tools to perform work safely. We are particularly impressed with ISM's effectiveness in involving all of those planning and doing the work and addressing workers' concerns throughout the planning, doing the work process, and closeout review. The Board holds public hearings quarterly to determine the status of ISM implementation throughout DOE's complex.

As to the Board's activities and its concerns about the public health or safety, which includes that of the onsite worker, I suggest that you search with other key words, for example, "Integrated Safety Management or ISM," "work planning," "safety planning," "standards utilization," "worker protection," "fire protection," "stabilization," "safe storage," or "inquiries into health and safety issues." In either case, I suggest that a thorough reading, rather than a key word search, of the Board's annual reports will provide you with more of the information you seek. (See enclosed copy of the Board's Annual Report for 1998.) I also commend to your attention the Board's recommendations to the Secretary of Energy. There you will find the Board taking action to provide necessary protection for the public health and safety. These recommendations include, but not limited to, hiring and retaining highly qualified professionals in engineering and the sciences, the use of ISM for comprehensive work planning at DOE facilities, effective disposition of DOE's internal oversight reports, and stabilization of hazardous materials pending final disposition.

The purpose of Mr. Azzaro's invitation to talk was to assure you that our previous lines of communication with you remain open. Our practice to communicate with concerned DOE or contractor employees, members of the public, or their legal counsel only is rooted in our concern to preserve confidentiality, both for the concerned employee and the Board's ability to take appropriate action. It further demonstrates to the individual that they do not have to go through anyone else to

secure our assistance. Consistent with our mandate, we will be happy to talk separately with any of the individuals you mention about health or safety concerns that they may have.

Thank you for the compliments paid to Messrs. Azzaro and Schapira. The Board agrees that they are outstanding public servants. As with our entire staff, the Board is very pleased with their service to the Board and its vital mission.

The Congressional Committees and Subcommittees that have jurisdiction over the Board are identified below:

Senate:

Senator John Warner, Chairman
Committee on Armed Services
SR-228 Russell Senate Office Building
Washington, DC 20510-6050

Senator Wayne Allard, Chairman
Strategic Subcommittee
Committee on Armed Services
SR-228 Russell Senate Office Building
Washington, DC 20510-6050

Senator Ted Stevens, Chairman
Committee on Appropriations
S-128 Capitol Building
Washington, DC 20510-6025

Senator Pete V. Domenici, Chairman
Energy and Water Development Subcommittee
Committee on Appropriations
SD-127 Dirksen Senate Office Building
Washington, DC 20510-6030

House:

Congressman Floyd Spence, Chairman
Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515-6035

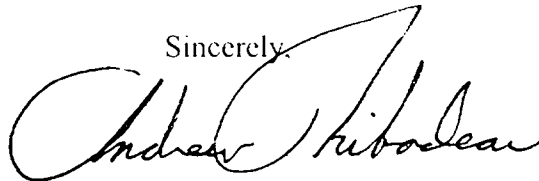
Congressman Duncan L. Hunter, Chairman
Military Procurement Subcommittee
Committee on Armed Services
2340 Rayburn House Office Building
Washington, DC 20515

Congressman C.W. Bill Young, Chairman
Committee on Appropriations
H-218 Capitol Building
Washington, DC 20515-6015

Congressman Ron Packard, Chairman
Energy and Water Development Subcommittee
Committee on Appropriations
2362 Rayburn House Office Building
Washington, DC 20515-6020

Thank you,

Sincerely,



Andrew L. Thibadeau
Director, Division of Information
Technology and Security