

[DNFSB LETTERHEAD]

June 30, 1995

The Honorable Tara O'Toole
Assistant Secretary for Environment, Safety and Health
Department of Energy
Washington, DC 20585

Dear Dr. O'Toole:

This month, the Subcommittee on Energy and Water Development of the House Committee on Appropriations, House of Representatives, released its [published Hearings on Energy and Water Development Appropriations for 1996](#). Having reviewed your testimony, I want to express the Defense Nuclear Facilities Safety Board's concern.

In responding to questions, you made several statements that were critical of the Board's statutory mandate and activities. In addition to being factually wrong in a number of instances, your remarks appear to be at odds with previous testimony and public statements by the Secretary of Energy.

For example, in a public meeting of the Board on December 6, 1994, the Secretary stated that she wanted to "acknowledge and applaud the role that the Defense Nuclear Facilities Safety Board has played in calling attention to important nuclear safety problems that needed priority attention at the Department of Energy." The Secretary went on to state that:

"The Board has been tenacious and focused in providing recommendations for improvement. These recommendations have been extremely influential and beneficial in assisting the Department in maintaining focus on our nuclear safety programs and operations."

Among the matters the Secretary cited as especially noteworthy was the positive influence the Board had on DOE's implementation of a standards-based safety program.

During hearings before the Subcommittee on Energy and Water Development on March 8, 1995, you, on the other hand, indicated that efforts by the Board to improve nuclear health and safety in the defense nuclear facilities complex have been counter-productive to efforts to improve health and safety and have improperly skewed DOE's application of resources. As an example, you stated:

- "One of the problems with the board is it is devoted to nuclear safety, and half of all the fatalities in DOE sites since the dawn of the Atomic Energy Commission have been construction incidents. So that plus the sexiness, if you will, associated with radioactivity, I think, sometimes skews our priorities toward very high consequence, but low probability scenarios such as the possibility of an earthquake taking down a building at Rocky Flats, a situation in which we are poised to spend tens of millions of dollars correcting instead of implementing effective monitoring programs to prevent beryllium disease in people at Rocky Flats, which is a fatal disease that we know people are getting as a consequence, and we know how to prevent by preventing exposures. So that is my first concern, that the Board's emphasis on nuclear safety prohibits the kind of multidisciplinary approach that is really necessary in today's world."

Your reference to the Board's recommendation to correct deficiencies in a building at Rocky Flats, I assume, applies to Building 371. It is planned that this building is to house essentially the entire Rocky Flats inventory of plutonium; it is most of the DOE's plutonium other than that in the form of pits removed from nuclear weapons and located at Pantex. This Rocky Flats inventory comprises many tons of plutonium. In fact, the

Board recommended that steps be taken to assess the structural competence of Building 371 in light of estimates of the severity of earthquakes and other natural phenomena that might be anticipated to occur at Rocky Flats. In view of your health and safety responsibilities, the Board would like to know what alternative measures you have taken or wish to take with regard to Building 371. The Board is also interested in assuring the health and safety of Rocky Flats' workers from all hazards. Thus, we would be interested in receiving a copy of any actions you have mandated to prevent beryllium disease in people at Rocky Flats and any documentation that assuring structural stability of Building 371 is responsible for inadequate attention to beryllium disease problems.

Among other criticisms of the Board in your published testimony, you state:

- "The defense board has about 150 people devoted exclusively to telling us what to do, and they can create a lot of work."
- "I think the lack of any opportunity to investigate the cost implications and the relative benefits of the Defense Board recommendations is also a negative which we could change if we had the statutory authority to change the way we deal with the Board. Most regulators have a period for public comment after they suggest a rule or a proposal."
- "We have 45 days to respond to a board recommendation, and although they are only recommendations, the political penalty for saying to this group of eminent people who think we have a safety problem, no, we are not going to do that, is quite high. So, for the most part, we accept the recommendation and then try to figure out what we got ourselves into. That may not be the best way to proceed, either."
- "I really could not estimate what the DOE spends on implementing the board's recommendations. It would be in the hundreds of millions of dollars category given all of the recommendations that have come in since the board began in 1990."

To set the record straight:

- The Board does not have and never did have 150 people telling DOE what to do. At the time of your testimony, the Board's staff numbered 101 of which 63 were technical and 6 were legal, none of whom can tell you or any DOE person what to do. Neither can the five Board Members. Board Members, and only they and not staff, can make recommendations to the Secretary of Energy, which the Secretary may accept in whole, in part, or reject.
- The Secretary has up to 90 days (not 45 as you state) to respond to recommendations. Most Board recommendations have elicited a request from DOE for a 45-day extension beyond the first 45 days and every one has been granted to date. Moreover, most recommendations are preceded by discussion of the safety problems with high level DOE officials or issuances of a Board trip report to DOE, which addresses the safety problems. Under these circumstances, to assert that DOE personnel, given three months, are incapable of estimating the cost to implement a recommendation, is worrisome. More worrisome is the acknowledgement that a DOE official with safety oversight responsibility does not use that time period to develop alternative safety conclusions or options for the Secretary's consideration when the Board's recommendation is disagreed with, and the implication that the Secretary's decisions are politically motivated.
- Every Board recommendation to date has been made public as required by law immediately after receipt by the Secretary, and is then open for public comment. Comments have been received from

individuals and groups as to Board recommendations and they have been given consideration and made part of the official record in every case.

- DOE by law has up to 135 days (more than four months) to prepare an implementation plan after acceptance of a Board recommendation. In practice this time constraint has not been adhered to. However, throughout the entire process of considering the Board's individual recommendations, preparing the implementation plan, and actual implementation, there is ample opportunity to investigate the cost relative to benefits and the Secretary, for budgetary considerations, can determine that the recommendation is impractical. In view of your public statements, the Board would be interested in knowing which of its 32 recommendations, to date, you believe for budgetary or other considerations should be declared impractical.

The Board believes that each and every one of its recommendations made to and accepted by the Secretaries of Energy is necessary to ensure adequate protection of worker and public health and safety and that they encompass standard and accepted normal nuclear safety practices. To the extent incremental cost to DOE is occurring, that is due to previous failure to enforce existing and necessary nuclear safety requirements. If you believe it is necessary to improve worker safety for other than radiation and nuclear explosives hazards, it is incumbent upon you to take the necessary actions. DOE need not and should not substitute one for the other.

Sincerely,

John T. Conway

Chairman

c: The Honorable Hazel R. O'Leary, Secretary of Energy
The Honorable Charles B. Curtis, Under Secretary of Energy
The Honorable Thomas P. Grumbly, EM-1
The Honorable Victor H. Reis, DP-1
Mr. Mark B. Whitaker, Jr., EH-9

Enclosure