

November 26, 2018

Mr. Glen Sklar
General Manager
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW
Washington, DC 20004-2901

Dear Mr. Sklar:

I saw on the DNFSB web page that the Board has scheduled a public hearing for November 28, 2018 to discuss DNFSB's access to information and to receive public input regarding the role of independent oversight and interfaces between DNFSB and DOE.

I would appreciate if the Board would consider the following comments (postmarked before the hearing) about DNFSB's oversight, using the example of the Hanford Waste Treatment and Immobilization Plant Project.

1. The existing relationship between DOE and the DNFSB has not been productive because the DNFSB has no enforcement capability. To call DNFSB's role "oversight" is a misrepresentation that provides a false sense of regulation¹. DNFSB only has the power to comment and request responses. DNFSB's role today has outlived the usefulness of the original enabling legislation. Unfortunately, the DOE Office of Enforcement, which does have an enforcement capability, has been politicized and made vulnerable to contractor lobbying. For example, the 2012 Enforcement Report, for which the enforcement conference was held in January 2013, did not result in a monetary settlement until years later.

As a result, DNFSB might consider analyzing DOE's enforcement processes, because correcting those might have an impact. Why does OE refuse to apply fines, or decide to delay reports? Why does the OIG also do this?

2. The newly revised DOE Order makes DNFSB's access to information more difficult, especially for DOE facilities that are Hazard Category 3 (or

¹ For example, the NAPA Organizational Assessment – Incorrectly assumes DNFSB has an "oversight" role and incorrectly says much has changed in the last few decades.

<https://www.dnfsb.gov/sites/default/files/meeting/NAPA%20-%20DNFSB%20Organizational%20Assessment.pdf>

“gamed” to be Hazard Category 3). The consequences have already been that Bechtel and ORP at Hanford have partnered in reducing the hazard category of the Low Activity Vitrification Facility to Hazard Category 3 to duck safety requirements, and reduced the WTP laboratory Hazard Category even further to “radiological facility,” despite the eventual purpose for processing HLW. Reducing DNFSB access to documentation would prevent even *comments* on these facilities, wasting the public’s money even more egregiously on arguments over document access. Contractors and DOE will be motivated to continue to falsely reduce hazard category. The LAW vitrification off-gas system is convoluted and dangerous, as it generates lethal NOx gases and uses toxic ammonia gasses. There is no value added to the new document access restrictions.

DNFSB has been reviewing WTP for years. This is clear if you look at the long period of repeat issues (since 1993, for Hanford) and the recommendations that are superficially closed that rely on “planning”².

- DNFSB accurately identified fast track design-build as more than a bad idea for the first of a kind, convoluted WTP in a letter to Jessie Hill Roberson³ (of DOE at that time) on *July 30, 2002!*

As a result, I believe the DNFSB should be disbanded, and that Congress needs to establish genuine regulation, vigorously enforced, for DOE and the DOE/Contractor Partnership.

- If this is not feasible, then DNFSB should be given unfettered, direct access to all DOE and Contractor information data systems relating to DNFSB’s mission, and should review DOE’s failure to provide effective oversight and enforcement. The new DOE Order 140.1 is another example of DOE waste as it will create wasted administrative effort (great for the jobs program, but not helpful to safety). Congress should act to provide specific enforceable oversight and access, and replace the DOE/contractor fiefdom as manager of nuclear facilities.

² See *OIG Reports on DNFSB (December 20 Meeting)* - <https://www.nrc.gov/reading-rm/doc-collections/insp-gen/dnfsb/2018/>

Most Serious Challenges documented in **DNFSB-18-A-01** Shows Recommendations Closed. *Implementation of Governing Legislation – DNFSB-18-A-05* – has no recommendations at all.

³ Letter 200273002-0001732.