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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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June 13, 2000

The Honorable Carolyn L. Huntoon
 Assistant Secretary for
 Environmental Management
 Department of Energy
 1000 Independence Avenue, SW
 Washington, DC 20585-0113

Dear Dr. Huntoon:

The Defense Nuclear Facilities Safety Board (Board) has been following the Department of Energy's (DOE) efforts to implement DOE Order 435.1, *Radioactive Waste Management*, across the DOE complex in response to the Board's Recommendation 94-2, *Conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites*. DOE Order 435.1, when issued on July 9, 1999, carried with it a compliance date of July 12, 2000. As indicated in Secretary Richardson's letter of December 20, 1999, transmitting the final report on Recommendation 94-2, DOE is fully committed to aggressive implementation of the Order.

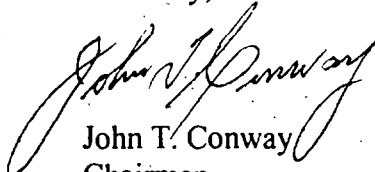
In examining DOE's Rocky Flats Closure Contract and interpretations issued by the DOE Rocky Flats Field Office (RFFO), the Board's staff noted that RFFO may not be interpreting DOE Order 435.1 appropriately. In a memorandum to the Kaiser-Hill Company dated January 27, 2000, and in a subsequent revision to that memorandum dated May 10, 2000, RFFO indicated that the Rocky Flats Environmental Technology Site (RFETS) is not subject to two requirements described in the manual for DOE Order 435.1. The RFFO interpretation indicates that these requirements do not apply because RFFO considers RFETS not to be an "operating" facility, and that RFETS does not have ongoing "operations" generating "new wastes." The Board's staff examined DOE Order 435.1 and its associated manual and implementation guide and was not able to discover any basis for concluding that a facility that generates and stores radioactive waste is not an operating facility within the context of DOE Order 435.1. The staff's report on this issue is enclosed for your information and use.

The requirements in question were intended to avoid on-site storage of waste for extended periods of time and to prevent the generation of wastes that do not have a path for disposal. The Board has no reason to believe that RFETS is failing to dispose of wastes as expeditiously as practicable or unnecessarily generating wastes with no path to disposal. However, the interpretation that the requirements do not apply for the reasons stated is of concern because of the precedent being set. The Board is concerned that such an interpretation may be used improperly elsewhere to avoid compliance with substantive requirements of Order 435.1.

The Board believes that justifiable exemptions for RFETS from the prohibitions against storing wastes longer than one year and generating wastes with no identified path to disposal should be handled formally as provided for in DOE Order 435.1 or through the exemption/variance process of DOE Order 251.1, *Directive Systems Order*, instead of relying on a local interpretation that these requirements of DOE Order 435.1 do not apply.

This issue is called to your attention for such administrative action you deem appropriate. The Board would like to be advised relative to this matter and suggests it be included as a topic for our regular information exchange sessions. In addition, as the July 12, 2000, compliance date for DOE Order 435.1 is rapidly approaching, the Board requests a briefing as soon as practicable on DOE's progress toward complex-wide implementation of that order.

Sincerely,



John T. Conway
Chairman

The Honorable David Michaels
Brigadier General Thomas F. Gioconda
Mr. Paul Golan
Mr. Mark B. Whitaker, Jr.

Enclosure

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Staff Issue Report

May 18, 2000

MEMORANDUM FOR: J. K. Fortenberry, Technical Director

COPIES: Board Members

FROM: D. M. Winters

SUBJECT: Rocky Flats Environmental Technology Site Implementation of Department of Energy Order 435.1, *Radioactive Waste Management*

This report documents an issue reviewed by the staff of the Defense Nuclear Facilities Safety Board (Board). The staff examined a memorandum dated January 17, 2000, and a subsequent memorandum dated May 10, 2000 (revision to the memorandum of January 17, 2000), in which the Department of Energy (DOE) Rocky Flats Field Office (RFFO) provided Kaiser-Hill with its interpretation that certain requirements of the manual for DOE Order 435.1, *Radioactive Waste Management*, do not apply at the Rocky Flats Environmental Technology Site (RFETS).

Two fundamental goals of DOE Order 435.1 are that wastes that do not have a path to disposal not be generated and that there be no unnecessary on-site storage of wastes for extended periods of time. Specifically, the manual for DOE Order 435.1 (see section 2.F.(19) of chapter I and section H.2 of chapters III and IV) prohibits generating waste for which there is no defined path to disposal unless a process for identifying and approving its generation is developed and implemented, and DOE Headquarters is notified of the decision to generate such waste. The manual (see section N.(2) of chapter IV) also prohibits the on-site storage, for longer than one year, of low-level and transuranic wastes that have a path to disposal unless specifically authorized by the Field Element Manager. RFFO concluded that these requirements are not applicable to RFETS on the basis that they apply only to ongoing "operations" generating "new wastes" and to "operating" facilities, not to wastes generated by site closure activities.

The Board's staff reviewed DOE Order 435.1 with its associated manual and implementation guide and explored the subject with cognizant staff from the DOE Office of Environmental Management. The Board's staff can find no basis for concluding that the Order applies only to "operating" facilities or only to facilities that are generating "new wastes." The manual for DOE Order 435.1 states: "The requirements of this manual apply to all new and existing DOE radioactive waste management facilities, operations, and activities." The manual defines "radioactive waste management facility/operations/activities" as "all land, structures, other appurtenances, and improvements on the land which generate, treat, store, or dispose of radioactive waste, and the operations and activities associated therewith." The Board's staff considers the activities at RFETS to be covered by this definition.

The staff has no reason to believe that RFETS is storing wastes on-site for longer than is necessary or generating wastes that have no identified path to disposal. However, the RFFO interpretation may set a negative precedent for implementation of DOE Order 435.1 at other DOE sites and facilities. Using either the waiver/exemption process provided in DOE Order 435.1 or the generic process found in DOE Order 251.1A, *Directive Systems Order*, would better ensure that such exemptions are thoroughly reviewed by DOE. Such review would serve to protect the intent of DOE Order 435.1, as well as that of the Board's Recommendation 94-2, *Conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites*, which encouraged that Order's promulgation, that DOE implement a comprehensive and integrated complex-wide waste management system.