In the Matter of:

Defense Nuclear Facilities Safety Board

November 28, 2018
Public Hearing

Condensed Transcript with Word Index

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SECOND PUBLIC HEARING ON THE
DEPARTMENT OF ENERGY'S INTERFACE
WITH THE
DEFENSE NUCLEAR FACILITIES SAFETY BOARD

November 28, 2018
10:00 a.m.

Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW
Washington, DC 20004

Chairman: Good morning. My name is Bruce Hamilton, and I am the Chairman of the Defense Nuclear Facilities Safety Board. I will preside over this morning's public hearing. I now call this hearing into order.

I would like to introduce my colleagues on the Board. To my left is Board Member Daniel Santos; to my immediate right is Board Member Joyce Connery; two seats to my right is Board member Jessie Roberson. We four constitute the Board.

The Board's acting general counsel, Mr. Joseph Gilman, is seated to my far right. Several leaders and members of the Board's staff who are closely involved with oversight of the Department of Energy's Defense Nuclear Facilities are also here.

This hearing is the second of three public hearings planned by the Board to gather information regarding the objectives and implementation of Department of Energy Order 140.1, Interface with the Defense Nuclear Facilities Safety Board.

Specifically, we will obtain information on the Board's access to information, facilities and personnel, and on potential impacts to the Board's Resident Inspector Program. The first hearing was held here on August 28th, 2018, and the third hearing will be held in New Mexico some time in February.

The Board's enabling legislation contained within the Atomic Energy Act, as amended, defines this agency's authorities, responsibilities, functions and organizational structure. The enabling legislation assigns responsibilities to the Secretary of Energy in his or her role as the owner and regulator of the Department's complex of sites and facilities, regarding cooperation with the Board, and providing the Board with "ready access to such facilities, personnel and information as the Board considers necessary to carry out its responsibilities."

DOE Order 140.1 is the topic of today's hearing. It is the primary vehicle that the Department uses to implement the Secretary's responsibilities for interface and cooperation with the Board. Prior to May of 2018, the Department implemented its interface with the Board through a DOE Manual, a lower level of Department directive that was developed through close cooperation between our two agencies. The new order did not receive that same level of close cooperation during development. Because of fundamental changes introduced in the order, the Board voted to hold this set of public hearings to
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1 discuss those changes with Department leadership.
2 In the first session today, the Board will hear
3 testimony from DOE Office of Environmental Management
4 personnel regarding changes contained in the order,
5 including the Board's access to information, facilities
6 and personnel, and potential impacts to the Board's
7 Resident Inspector Program. In the second session,
8 members of the public may provide comments.
9 The Board announced this morning's hearing on
10 October 24th, 2018 on its public website and
11 subsequently posted a notice in the Federal Register on
12 November 7th, 2018. To ensure accurate and timely
13 information, this hearing is being video-streamed live,
14 as well as recorded through video recording and a
15 verbatim transcript. The transcript, associated
16 documents, public notice and video recording will be
17 available for viewing on our public website. The Board
18 will make the video recording available on its website
19 for at least 60 days.
20 Per the Board's practice, and as stated in the
21 agenda, we will welcome comments from interested members
22 of the public at approximately 11:30. A list of those
23 speakers who have contacted us is posted at the entrance
24 to this room. In general, we have listed the speakers
25 in the order which they contacted us, or if possible,
necessary to accomplish its mission.
Furthermore, it is not clear whether or not the current state is going to change or if the information will be provided to the Board in a timely manner. Since our last public hearing, on September 17th, 2018, the Board sent a letter to the Secretary of Energy regarding Order 140.1, where we describe our specific concerns and express our willingness to collaborate on appropriate revisions to better establish the interface between the two Federal agencies.
As of today, the Board has not received any formal response from the Department of Energy. About the same time, on September 12th, 2018, the Board unanimously approved that the DNFSB staff generate a redline strikeout version of DOE Order 140.1 containing specific revisions that the staff considers necessary to address all the concerns with the order.
This document has been delivered to the Board. This document, as well as the information gained from this series of public hearings, and our experiences with ready and timely access to Defense Nuclear Facilities personnel and information, will enable the Board to identify and propose further actions that will ensure the Board can continue to ensure adequate protection of public health and safety.

This concludes my opening statement. Thank you.

CHAIRMAN HAMILTON: Thank you, Mr. Santos.

Ms. Connery?

BOARD MEMBER CONNERY: Thank you, Mr. Hamilton.

I want to thank Assistant Secretary White for taking the time today to come talk to us. This is our second hearing on Order 140.1, and we didn't have the opportunity to speak with the Office of Environmental Management during the last hearing, so we thought it was important to do so today, given the number of Defense Nuclear Facilities under your purview and the importance of the work you do within the complex and its impact on the surrounding communities.

We posed many questions with regard to this order, the Department's intent, the expectations for the execution of the order, and ultimately the impact that full implementation of this order on nuclear safety. We proposed those questions to Mr. Moury and Mr. White, no relation, during our last hearing, and I don't want to take up a lot of time right now, but I do want to revisit briefly the main questions that I have for the Department, and those questions remain today, even after the first hearing.

First I'd like to know what problem this order intends to solve. After 30 years of interaction with the Board, the Department has issued an order that doesn't simply codify the status quo of interactions between the Board and the Department, but changes the interactions significantly in our view, and seems to endeavor to limit the Board's access and authorities to Defense Nuclear Facilities.

Therefore, my first question is, why? What problem are we trying to solve?

My second question has to do with any changes in expectations in the Department's view on how we do business, and specifically, Ms. White, I would be interested to know during the course of the hearing today if there are any changes that you envision, either positive or negative, as a result of the issuance of this order and the full implementation.

And, finally, I want to understand your philosophy on safety. We see a number of trends within the Department as a whole in making changes to its safety strategy, including a rewrite of 10 C.F.R. 830, the Federal Rule on Nuclear Safety, which is in rulemaking now, and also some of the associated standards are also in the process of being revised.

There seems to be some connection to the elements within Order 140.1 and DOE's own efforts to have a graded approach to nuclear safety, and I would like to understand the Department's overall intentions when it comes to that.

With that, thank you again for taking the time to come here today. I appreciate the magnitude of your day-to-day job and I take your presence here as an indication of your dedication to the health and safety of your workers and the public. I look forward to your remarks.

CHAIRMAN HAMILTON: Thank you, Ms. Connery.

I want to make a couple of personal remarks. First of all, I will formally introduce you in just a moment, Ms. White, but before I do so, I personally want to thank you for being here today. As you are aware, DOE 140.1, Order 140.1 is a contentious issue. It's a contentious topic. But I want to assure you that the questions today are not intended to be argumentative or confrontational or in any way to try to find some differences between what you say and what other DOE officials have said.

Likewise, the purpose of today's hearing is not to present arguments or critiques; rather, we are here only to determine what DOE Order 140.1 means to you and how you plan to implement it within the Office of Environmental Management. These conclude my personal remarks.
At this time, I will formally introduce the panel for the first section. This includes the honorable Ms. Ann White, Assistant Secretary for the Office of Environmental Management, Mr. John Mullis, Manager of the Oak Ridge Office of Environmental Management, and Mr. Chris Roscetti, our Technical Director here at the Defense Board. We are pleased to have you, Ms. White and Mr. Mullis, today. Thank you.

Welcome to our public hearing. Ms. White, I understand that you wish to provide an opening remark, so the floor is yours.

ASSISTANT SECRETARY WHITE: Good morning. I welcome the opportunity to provide opening remarks for this session at today's public hearing on the Department's interface with the Board. I want to thank the Board for this opportunity for open and transparent discussions. I also want to introduce Mr. Jay Mullis, our Oak Ridge site manager for EM.

Since my Senate confirmation, I have had the pleasure of meeting with the Board members and look forward to a continued strong working relationship with the Board. At the first hearing related to this order, Board Member Roberson made a comment that I found particularly resonant. She stated, "The Board hopes the Department doesn't see the Board as competitive, but complementary to ensuring safety." I wholeheartedly agree with that statement and will work to create that environment, not only at this hearing, but also as we progress the EM cleanup mission.

I am here to offer my perspectives on the interface of the Board with the Department of Energy and the intended changes from the transition from the former DOE Manual to Order 140.1. I will focus my perspectives on this interface as they relate to the Office of Environmental Management.

At the previous hearing, the Board heard from the Deputy Secretary, the Associate Undersecretary for Environment Health and Safety, and the Chief of Staff for NNSA.

At that hearing, much of the basis and process for developing the order was discussed. As you recall, the Deputy Secretary of Energy issued a memorandum in October of 2017 addressing the Department's relationship with the Board, which provides expectations for how the Department will interact with the Board and its staff. EM fully supports those expectations.

I firmly believe that although the Board and the Department are independent agencies, we mutually serve beneficial and essential functions in that the Board's independent analysis, advice and recommendations are vital to DOE ensuring adequate protection of public health and safety for which Congress and the public holds us accountable. I am affirming my commitment to carry out our mission as a Federal program office in safe, secure and environmentally responsible way. The Department is dedicated to providing reasonable assurance of the health and safety of our workers, and accepting full responsibility for any and all outcomes of our efforts.

The Board provides valuable insight and advice that the Department both appreciates and takes into consideration, but ultimately, DOE cannot abdicate our responsibility to manage the risks associated with our facilities and operate in an appropriate and conscientious fashion. Our work is critical to lowering the environmental risk posed by the legacy of the Cold War.

EM line management must be held accountable and we must have clear roles and responsibilities to ensure this is the case. These are guiding principles ingrained in how we do work safely. To that end, it is important for there to be clear distinction between the responsibility associated with our ownership of our Defense Nuclear Facilities, and the role of external advisors, including the Board.

The DOE order, which the Department issued in May of this year to supercede an outdated manual, is consistent with governing legislation and it does not hinder cooperation with the Board or prevent the Board from providing independent analysis, advice and recommendations to the Secretary to ensure adequate protection of public health and safety of the Department's Defense Nuclear Facilities.

The order provides direction to DOE personnel and not the Board personnel, and therefore cannot act to limit the Board's access and conduct of their charged tasks. At the working level, within EM, we have continued to conduct routine interface with the Board staff, as we have done for many years. I am not aware of any impairments to the ability of EM or Board staff to provide information or discuss issues, regardless of the hazard category, or the Safety-Class Control status.

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1 health and safety, this is our primary point of
2 interface and should be the focus of our interactions
3 and partnership. DOE Federal and contractor employees
4 are highly experienced and trained to execute their work
5 in and around the hazards posed by our work. Their
6 safety is the focus of our training programs and
7 multiple requirements established by our governing
8 regulations, directives, standards and procedures.
9 While we value your advice on these matters,
10 this should never detract from our shared focus on
11 protecting public health and safety. We will continue
12 to engage in dialogue related to worker health and
13 safety, and will appropriately consider advice, whether
14 formal or informal, as we have in the past, and we do
15 from many sources, including the Board.
16 On the issue of access to draft or predecisional
17 information, we reserve the right to control information
18 in the predecisional phase. I believe it is a
19 potentially ineffective use of our mutually limited
20 resources to pursue interim staff positions that may not
21 ultimately be relevant or implemented. Further, it is
22 necessary for us to work through an internal
23 deliberative process to develop our decisions prior to
24 sharing them with others.
25 This will ensure our subject matter experts can

26 freely offer ideas and conceptual solutions, as well as
27 ensuring our accountability and ownership of the
28 resulting decisions. We will consider and share this
29 information on a case-by-case basis if we believe the
30 information is mature enough to make the interaction
31 valuable.
32 Finally, concerning oversight of Hazard Category
33 3 Defense Nuclear Facilities. We note that in
34 accordance with the definition of Hazard Category 3,
35 these facilities do not, by definition, pose a risk to
36 public health and safety. While we welcome your review
37 and comment to help ensure these facilities are properly
38 categorized, as stated earlier, this interaction should
39 not detract from our focus on facilities with higher
40 hazard categorization which could pose a risk to public
41 health and safety, and should be our joint focus.
42 Looking to the future, here are some of the
43 things that myself and the Department are committed to
44 carrying out: I will continue to perform my role as
45 facility owner and regulator, as well as steward for the
46 taxpayer in safely achieving the cleanup missions
47 mandated by law to protect the public and lower the
48 environmental liability for the country.
49 DOE will continue to cooperate closely with the
50 Board and staff and provide complete access to the

51 information needed to carry out the Board's mission
52 consistent with your legislative mandate. For example,
53 in FY 2018, approximately 2,000 requests for information
54 were made by the Board and satisfied by DOE. A thousand
55 of those requests were made and satisfied since the May
56 2018 issuance of the order.
57 We will proactively engage with the Board and
58 staff so that we fully understand the basis and
59 underlying analysis behind its advice, or its draft
60 recommendations, including the safety benefits it sees
61 for Defense Nuclear Facilities.
62 Lastly, we will reinforce with DOE line managers
63 the expectation that they make sound technical decisions
64 drawing upon reasonably available information, including
65 advice and observation from the Board.
66 Thank you again for inviting me today, and I am
67 looking forward to having a discussion with you.
68 CHAIRMAN HAMILTON: Thank you, Ms. White.
69 The Board will now proceed with questions from
70 the panel. I will begin with the first question to our
71 Technical Director, Mr. Roscetti. Could you summarize
72 for us the first public hearing that we had in August,
73 and the ensuing letter that the Board sent to the
74 Secretary of Energy on September 17th of 2018 regarding
75 DOE 140.1 and the Interface Manual.

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5 (Pages 17 to 20)
nuclear material, and risk reduction in access to Defense Nuclear Facilities, which are the heart of your program. And I know you touched on some of these in your opening statement, but I just want to ask a series of questions, and you can elaborate as you feel free.

First of all, to you, Assistant Secretary White, can you describe your organization's perspective on EM's relationship with the Defense Nuclear Facilities Safety Board members and members of the Board staff prior to the implementation of DOE Order 140.1?

ASSISTANT SECRETARY WHITE: I believe it's been a sound and productive relationship throughout the years of EM. I personally called the field to discuss any impacts or negative consequences since the order was put into place, and the relationships continue to be strong, productive and very helpful.

BOARD MEMBER ROBERSON: Is there anything you expect needs to change in the relationship as a result of the order? Is there something EM thinks needed to change as a result of the order?

ASSISTANT SECRETARY WHITE: There really has been no change at the work base, and to me, that's where the rubber meets the road, in the field where our mission is getting delivered. And as I say, I personally called the sites to find out the status and

clean up of questions, and you can elaborate as you feel free.

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process, we actually have to formally ask the contractor what putting that into -- if there's a change or an impact with putting it in the contract and from our major D&D contractors, there, we've all gotten back that there's no change. So from their perspective as well, there is no impact as to how we operate at Oak Ridge. BOARD MEMBER ROBERSON: Thank you. CHAIRMAN HAMILTON: Just for the record, Mr. Mullis, you used the phrase "site representatives," we actually have resident inspectors. MR. MULLIS: Yes, sir. CHAIRMAN HAMILTON: It was not something that was your mistake, we used to call them site representatives, but the Atomic Energy Act specifically refers to the authority to have resident inspectors. And so in cleaning up our own shop, we went back to the correct title per the legislation a couple of years ago. MR. MULLIS: Yes, sir. CHAIRMAN HAMILTON: And I know you know that. MR. MULLIS: I misspoke on that. CHAIRMAN HAMILTON: It's easy to do, because our staff does it all the time. Thirty years of bad habit. Ms. White, I would like to discuss some language in the order, and I'll read what the Atomic Energy Act says. It says, "The Secretary will provide 'ready access to such facilities, personnel and information as the Board considers necessary to carry out its responsibilities.'" In the order, the phrase "as the Board considers necessary" is conspicuously absent. So that's just a little background. The order states that the Secretary or Secretary's designee may deny access to information requested by the Board. To your knowledge, has the Secretary delegated any authority to deny access to the Board, or is that supposed to work? Do you know? ASSISTANT SECRETARY WHITE: Right. And, you say, no, we don't know. So that's kind of why we're questioning that, not necessarily to say that anyone at the Department is saying, no, we don't know. ASSISTANT SECRETARY WHITE: Right. And, you know, we have a very healthy process for resolving differences of technical opinions that is formalized, and it's been used on many occasions. And in my experience, to date, we come to a healthy resolution through that process. BOARD MEMBER CONNERY: So I wanted to talk about the issue of Safety-Class Controls. You mentioned that in your opening statement the issue about Hazard Categories and Safety-Class Controls. The order contains language that could impact our access to information regarding facilities without Safety-Class Controls. I'll note there are enabling legislation in other parts of the Atomic Energy Act that do not place restrictions on the Board's ability to access facilities or information based on whether or not that facility has
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ASSISTANT SECRETARY WHITE: So again, according to the field, the relationship has not changed. We have no intent to limit the Board's access to information that you need to carry out your missions and mandates. Information requested by the Board to conduct its mission will continue to be provided in accordance with the law.

And importantly, too, as I've mentioned, the working relationship in the field is very important, and it's been successful, and it continues to be successful.

BOARD MEMBER CONNERY: I appreciate that. So a follow-on question, and again, it goes to something that you said in your opening remarks, which is how would you respond if the Board provided a communication in the form of a letter or a recommendation related to a Defense Nuclear Facility without a Safety-Class Control; or, for instance, if we wanted to hold a hearing on how we could use our statutory authority to give you a recommendation with regards to a facility?

ASSISTANT SECRETARY WHITE: I'm sure we would not reject them.

Board Member Connery: Thank you.

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to this line of inquiry and then his own question.

Mr. Santos?

BOARD MEMBER SANTOS: I appreciate the work and
I have seen it since I have been at the Board of the
collaboration, and the working relationships, and that's
my hope that they continue, and that they do not change.
I welcome and I'm very supportive of if there's areas
that may be of impact that we have a transparent and
productive dialogue.

The thing that gave me pause a little bit is if
that's the case, and if those are some foundation of
things that we agreed on, why wasn't that level of
cooperation and working together just to come up with an
order that defines the interface?

So if we talk about we want to collaborate, we
want to be transparent and we want to work issues out,
why can't we do that starting with this order? So
that's the part that makes me really skeptical and
question is anything going to change. I want to be
welcoming the dialogue, but we didn't get to participate
in the development of the Order, that gave me some
pause. So I hope you can appreciate that.

And what I'm concerned about is the concept of
timing. When it comes to nuclear safety, I think it
means not only access, but timely access. And if we get
caught up into a lot of bureaucratic debate on whether
or not we need to see the information to then do the
assessment, there safety could be impacted. Things can
be overcome by events. So the value of the Board on
oversight can be diminished.

So while we're trying to debate whether we have
access or not, events might be happening or things might
not be controlled. So those are two points I want to
make.

CHAIRMAN HAMILTON: And I think just to be sure,
Mr. Santos, there's no question in there. You're just
making an observation.

BOARD MEMBER SANTOS: No, I'm just making an
observation.

CHAIRMAN HAMILTON: Thank you. Okay, so no
response required.

BOARD MEMBER SANTOS: So the question to
Ms. White, can you describe the EM implementation
strategy for the order? I mean, in terms of timing,
training, your expectations of the implementation?

ASSISTANT SECRETARY WHITE: So as I understand
it, training sessions were conducted by my staff to the
field. That really highlighted the fact that this order
clarifies roles and responsibilities, it applies to the
Department and our contractors, and it is not intended

to preclude the Board from doing your job.

BOARD MEMBER SANTOS: Can you give me a little
bit on time-wise for implementation? When do you
expect --

ASSISTANT SECRETARY WHITE: I would have to get
back with you on that. That's something that the staff
is taking care of, and as I understand it, it's been
completed.

BOARD MEMBER SANTOS: I appreciate that we can
to get that for the record later.

ASSISTANT SECRETARY WHITE: Sure. Absolutely.

BOARD MEMBER SANTOS: Thank you so much.

Mr. Mullis, a similar question, but at Oak
Ridge, can you describe some of the implementation
efforts to date?

MR. MULLIS: Sure. So my staff and myself
participated in the rollout of the Order and the
subsequent training, and unless we get direction from
headquarters, there's kind of a standard process we go
through with each one of our contractors. We have
several D&D contractors, Environmental Management
contractors in Oak Ridge, so each one of those contracts
is a slightly different type of contract, so there's
different timelines for that.

But at this point in time, we've asked all our
contractors, through the contract process, to evaluate
impacts to implement the Order and then, of course,
depending on that, we would either negotiate a contract
change if there is -- if they came back and said it's
going to cost this much more money, we have to negotiate
that in contract space. At this point they have come
back and said no impact, so we will move down the road
to implement that.

There's kind of a quarterly update typically to
the standards that are in our contracts, and it would
just go into that normal update. Of course, if there's
a -- if it did have impacts, that would be different, we
would have to go through a negotiation process. So
that's kind of the timeline for that.

So I would expect that within the next six
months, it will be in all our contractors' contracts.

BOARD MEMBER SANTOS: So if we could include
that for all EM sites, including Oak Ridge, ma'am.

ASSISTANT SECRETARY WHITE: Absolutely. We will
get that data to you.

BOARD MEMBER SANTOS: Thank you.

You talked about training, Mr. Mullis. Can you
describe the training and how you participated yourself.

What is your perspective on the training?

MR. MULLIS: Sure. Training was done by VTC and
call-in for each one of the sites. And there is a set
of slides that was prepared, along with a copy of the
order, and I think there were a lot of questions kind of thing as well. And so there was a
discussion by VTC led by headquarters.
The first session was actually I think led by
maybe AU, Mr. Moury's shop, and that's the one I think I
participated in. There was a subsequent one that EM had
as well that all the staff participated in. So all the
site liaisons and backup liaisons to my knowledge on our
side for the Defense Board participated. And I can tell
you my staff and several of the site reps did as well
for Oak Ridge.

BOARD MEMBER SANTOS: So you can give me some of
the feedback that were provided by your team of Federal
employees or contractors or any outside stakeholders?
MR. MULLIS: We did not share with outside
stakeholders.

BOARD MEMBER SANTOS: Okay.
MR. MULLIS: We did -- I cannot remember,
frankly, whether or not contractors participated in
those training sessions or not. Typically, we would
have a separate training session for contractors if they
have questions. Normally that's done, unless it's a
huge change to something like 420, when the big change
to 420 occurred a few years ago, we would not send them
to that training, we would handle that on a case-by-case
basis.

I don't recall any specific feedback, other than
we've got a new order that we're putting in that
replaces the manual. I don't remember anybody saying,
oh, this is going to cause us not to do this or to do
that. So --

BOARD MEMBER SANTOS: The part that intrigueme
is, I understand all of you saying there's no change,
but a literal read of the order clearly shows change,
and I'm just trying to understand how you all reconcile
that. Was that emphasized as part of the training?
MR. MULLIS: It was. It was. And it was in the
slides -- my recollection is, at least for the part I
sat in, it was in the slide deck and in the set of
questions, as to what these things really meant. And
what we got out of it was, no big change. And the fact
that the reason we were updating the order had been over
a decade since the manual had been issued. And, of
course, over time, we've tried to become more
disciplined in our command media and, you know, we used
to operate under the old four-digit orders, and over
time that has changed as we migrated to a three-digit
order.

So my perspective was, after sitting through the
training, that it was simply a matter of trying to
update our command media to be more in line with how all
the other DOE orders and manuals operated at this time,
and implementation guides.

BOARD MEMBER SANTOS: Thank you.
CHAIRMAN HAMILTON: Thank you, Mr. Santos.

Ms. Connery?

BOARD MEMBER CONNERY: So given the fact that
the order is written as a DOE-wide order, and the
Defense Nuclear Facilities largely fall in either EM,
Environmental Management, or in the National Nuclear
Security Administration, the semi-autonomous National
Nuclear Security Administration, I just have a couple of
questions about how that interface works when you are on
site with the presence of both NNSA and EM. Because
that often causes tension in the Department, having
lived through that on your side of the fence, so I'm
wondering how interactions with the Defense Board may be
impacted by that.

So, Ms. White, at several of your field
locations where this whole EM and NNSA Defense Nuclear
Facilities, like Savannah River, EM conducts the cleanup
activities at H Canyon, while NNSA conducts the training
activities at H area using the same contractor. Can you
discuss how EM and NNSA coordinate to ensure consistent
implementation of interface with the Board, or if there
has been any challenges that you've seen in that area?

ASSISTANT SECRETARY WHITE: We have a number of
sites where, as you say, there's both EM facilities and
NNSA facilities. We enjoy a cooperative relationship
with our semi-autonomous sister organization, and we're
always actually working to improve those communications.
We just started a project recently not related to the
Defense Board that's around that very topic.

So, and certainly if you become aware of any
rubs regarding that, please let us know and we'll
address it.

BOARD MEMBER CONNERY: Thank you.

Mr. Mullis, how do you anticipate working with
NNSA relative to the Board interface during your
upcoming environmental management work at the Y-12 site,
speaking specifically to the decommissioning work at
Alpha 5?

MR. MULLIS: Well, I don't see that changing
dramatically, as it has over the last several years. I
mean, we've always had facilities and work going on out
there, and at one point in time, Y-12 was part of Oak
Ridge and, of course, Oak Ridge broke apart into
separate entities. When I was the Defense Board liaison
and part of the Nuclear Safety Program, I certainly contacted and stayed in touch with my counterparts over there and vice versa over the different recommendations and things that were occurring. While we share information and we will do our best to coordinate, we don't speak for them, they don't speak for us.

And so at times there has been a different approach, site dispersion analysis, things like that, out of the two organizations. And so to the extent we can cooperate and the extent we can give a unified approach, we will, but given that EM work is different than the work they do, I think you'll -- there is going to be times as well when we -- things may be a little bit misaligned, quite frankly.

BOARD MEMBER CONNERY: So the point I'm trying to get at is with the implementation of the interface document, 140, the order, we do enjoy a close working relationship with EM at the Resident Inspector level, as well as with NNSA, but what we've noticed is that there are different approaches as to, say, who has the authority to decide that something is predecisional? Who gives the authority to release the document? And sometimes, say on the NNSA side, it may go up to a field-level NNSA person, and on the EM side it might be somebody at a different level.

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We're just wondering whether or not that will be calibrated, it doesn't necessarily have to be, but will that have impact on how we interact with you or whether or not we will be able to get the timely information we need? And I'll direct that at Ms. White.

ASSISTANT SECRETARY WHITE: So as Jay mentioned, they're independent organizations. Speaking for EM, if there's issues or problems, we want to hear about it. And I hope that -- that if things come up, there will be a dialogue.

BOARD MEMBER CONNERY: Me again. Sorry. So we're going to geek out a little bit on the nuclear safety side of the house, and one of the lines of inquiry during our previous public hearing regarded the integrated nature of safety. In an Integrated Safety Management System, the erosion in the capabilities of facilities without Safety-Class Controls or facilities with low or facilities with low end-life consequences to off-site individuals could be lead indicators of the extent of conditions with implications at facilities with significant analyzed consequences to off-site individuals. This concept is explained in great detail in the Board's Technical Report 20, Protection of the Collocated Worker at the Department of Energy Defense.

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With respect to things we might learn in a less hazardous facility, we certainly would apply those to a more hazardous facility. I guess I don't -- I don't see the distinction that I think folks are trying to make between a Haz Cat 2 facility with Safety-Class Controls and a Haz Cat 2 facility without Safety-Class Controls and a Haz Cat 3 facility. If they all have the same hazard, they all have the same hazard and we would approach that hazard appropriately. Okay?

Now, off-site consequences may drive control selection, so it might differ between how close to the site boundary you are versus how far away from the site boundary to direct what might get Haz Cat 2 Safety-Class Controls and more likely to have Safety-Significant Controls, but as far as the hazards, we will address hazards as we find them. And we have lessons learned, one of the Board members mentioned Idaho, it might have been you, but as soon as we heard about that, we started developing lessons learned and trying to look and see if we had similar moratoriums within our population at TWPC, Transuranic Waste Processing Center.

BOARD MEMBER CONNERY: So I think you made my point, which is that these categorizations are somewhat artificial in terms of how we see our oversight. We see...
1 our oversight as being equal in all categories, because
2 there is no difference in how you approach those safety
3 issues, and they're integrated. So I appreciate that.
4 MR. MULLIS: Well, if I might elaborate, I would
5 say the only thing this would be worth is the
6 controlling the control selection, right?
7 BOARD MEMBER CONNERY: Right.
8 MR. MULLIS: But again, that's our internal
9 documents that are appropriate for the DOE. I don't
10 know that they would apply to you at all.
11 BOARD MEMBER CONNERY: Right. And your control
12 selection is obviously the choice of the Department.
13 MR. MULLIS: Correct.
14 BOARD MEMBER CONNERY: We just analyze it for
15 our purposes to see if it is appropriate for the
16 situation at hand.
17 MR. MULLIS: Correct.
18 BOARD MEMBER CONNERY: So you gave me a great
19 lead-in. As we discussed earlier, Ms. White, at
20 transuranic waste facilities, notably at WIPP, and most
21 recently at Idaho, those are examples where the DOE and
22 the Board evaluate the extent of conditions and
23 determine valuable lessons that could be applied across
24 the complex. So you are doing that and we are doing
25 that as well.

These facilities also don't have Safety-Class
Controls, and could be excluded from the Board's
oversight by the Order. So can you discuss DOE's
approach in reviewing safety information at all your
facilities to identify the extent of condition issues
and lessons learned that could be applied across the DOE
complex?

ASSISTANT SECRETARY WHITE: Yes. So as Jay
mentioned, we're always looking at lessons learned
across the complex. We've got a very robust oversight
system within EM itself, as well as other areas of the
Department. So we enjoy that relationship and that
input, and also from the Board.

So the lessons learned component is very
important, and, you know, we learned a lot of lessons
with WIPP, for example. So we're constantly striving to
do better and learn more throughout our mission.

BOARD MEMBER CONNERY: Thank you. I'm a big fan
of your operational experience, formalization of those
lessons learned, and we encourage that at all points,
but I just want to, in closing, on this topic, state
that this confirms my belief that safety oversight
information gathered at all Defense Nuclear Facilities
are needed to help address the most challenging nuclear
safety issues facing the DOE complex, and that's why

we're concerned about access to all of the facilities
and having our Board be able to conduct reviews, our
Board staff be able to conduct reviews regardless of
Hazard Category facilities and regardless of
Safety-Class Controls. Thank you.

CHAIRMAN HAMILTON: Board Member Roberson?

BOARD MEMBER ROBERSON: Thank you, Mr. Chairman.

I want to explore a topic, the topic of workers as an
essential part of public health and safety, that I worry
that either we and the Department are talking past each
other, or I don't know what's happening, but the Board
has provided recommendations and other formal advice to
the Department in areas that include a focus on safety
of the workers at Defense Nuclear Facilities, and can we
put Exhibit 4 up.

So this is a list of some examples, it's by far
not exhaustive. One example I want to focus on as it
relates to the Environmental Management Program is Board
Recommendation 2012-1, the Savannah River site, Building
235-F. In this recommendation, the Board identified
inadequate controls for fire scenarios with an
unmitigated dose consequence of multiple thousands of
rem to more than a thousand collocated workers who were
routinely near Building 235-F.

The Secretary accepted the Board's

recommendation and stated in the Department's
implementation plan, and I'll try to quote this, "This
IP focuses on addressing the corrective actions
necessary to confirm assurance of adequate collocated
worker protection."

The recommendation is still open today, and we
see progress, we're very supportive of that. It's open
with ongoing actions by DOE and the contractor to
address the issues identified in the Board's
recommendation.

I guess if we were to issue this recommendation
today, as we read DOE Order 140.1, as it certainly
includes focus on some worker safety issues, would the
Department reject that recommendation?

ASSISTANT SECRETARY WHITE: We would certainly
look at the input and evaluate it. In the 235-F
situation, there were many reasons to try and reduce the
combustible load. You don't want to fire at any nuclear
facility of any variety. So that was a very welcomed
recommendation. As you said, we've been working on it.

So certainly we take input from anyone on improved
worker health and safety.

BOARD MEMBER ROBERSON: So, I just want to
explore for a minute. I appreciate that. I guess what
we struggle with when we look at some of the proposals,
MR. MULLIS: On the specific question about do...
past couple of years, all those systems are being used robustly.

BOARD MEMBER ROBERSON: And let me say, all those systems are in place and they are widespread within the agency, but I'm specifically focused on technical issues as it relates to safety controls and ensuring adequate protection. We certainly, and as I'm sure you do, hear from workers across the complex, and what we're concerned about is a message that says, the Board has no role as it relates to the workers at our facility could certainly translate into a message we think is the wrong message.

MR. MULLIS: I don't see that message being out there. When I get something back from the contractor saying we see no impact for implementing this order, to me that tells me there's not going to be some overt hidden message that's being provided to the worker at the workplace to not talk to the Board staff.

BOARD MEMBER ROBERSON: We should just all be diligent. And I appreciate that.

CHAIRMAN HAMILTON: Thank you, Ms. Roberson. Board Member Santos?

BOARD MEMBER SANTOS: I would like to follow up on that, because I see components of safety's adherence to a standard set of requirements, and for that you have a robust infrastructure. So help me understand a little bit. Because the phrase that we keep hearing today, and actually one that I accept, and I want to believe it, is the "no change. The order results in no change." But as you know, you're going to have some of this order being implemented in the contracts. And I want to understand whether "no impact" equals "no change," because contractors typically follow the letter of the requirements.

So if they apply a strict implementation and reading of the requirements that are in their contracts, I'm trying to understand how that's not going to result in -- how that's going to result in no change. So I'm trying to understand the difference between no impact, which tends to be cost, versus no change in the way things are faced with the order given that language. Could you expand on that?

MR. MULLIS: I assume that's directed at me.

BOARD MEMBER SANTOS: Yes. And Ms. White, too.

ASSISTANT SECRETARY WHITE: So, again, the order applies to DOE and our contractors, and our contractors will use the path that we've asked them to, which is to go through the Department on these topics, and that's in my opinion reasonable and appropriate. It just clarifies roles, responsibilities and lines of communication.

BOARD MEMBER SANTOS: So a contractor may literally read no access, but then when he approaches the Department officials, then the Department officials will say, no, no, no, no change, they do get access. Is that a way to read this?

ASSISTANT SECRETARY WHITE: I can't -- so I can't imagine a situation in which if the resident inspectors, or anyone from the Board wanted access to a Hazard Category 3 facility, that we would deny it. So that's what I can say.

BOARD MEMBER SANTOS: Okay. And to Mr. Roscetti, do you have any evidence or anything from our resident inspectors where the new order has resulted in some challenges to have ready access?

MR. ROSCETTI: No, sir. I don't have any examples regarding our resident inspectors having issues with access at EM facilities.

BOARD MEMBER SANTOS: Okay. What about other elements? Other programs?

MR. ROSCETTI: I think at the last public hearing on August 28th, 2018, we described some issues regarding access to information in general, but not necessarily specific to the resident inspectors.

MR. SANTOS: And that includes both with the DOE Federal employees and the contractors?

MR. ROSCETTI: The way that the Board staff interacts with the Department regarding access to information, we have Federal liaisons that we work through for information, so they're the final decision as to whether we get the information we request. And when we make the request, we follow the site procedures. In the instance of the resident inspectors, and for headquarters staff, we fill out a form, there's a formal request made, and again, the Federal liaisons are the ones that ensure that the contractors provide that information we request.

BOARD MEMBER SANTOS: Thank you.

CHAIRMAN HAMILTON: Thank you, Mr. Santos.

I have a short follow-on for Mr. Roscetti on this line of inquiry. Does the Atomic Energy Act as amended refer to hazard categories?

MR. ROSCETTI: No, sir. The Atomic Energy Act as amended does not refer to hazard categories.

CHAIRMAN HAMILTON: Where are they defined, and who makes that decision?

MR. ROSCETTI: So I believe it's DOE Standard 1027 references Hazard Category 1, 2 and 3, and then Radiological Defense Nuclear Facilities. As far as who makes that determination, it's a process that the
contracts would propose and the Federal entities would
then approve or bottom line.

CHAIRMAN HAMILTON: So I'm correct to say that
the Atomic Energy Act does not address hazard categories
and that is a DOE construct. Is that a correct
statement?

MR. ROSCETTI: Yes, sir, that's a correct
statement.

CHAIRMAN HAMILTON: New line of inquiry, and the
good news, Mr. Mullis, I was going to ask you about
deliberative documents and predecisional documents in
delivery of meetings, but we pretty much beat that to
death, Ms. White addressed it in our opening remarks and
took all your thunder, but I've got one just short
question. Would you put up Exhibit 5, please.

I'm going to introduce this into the record.

This is a list of potential situations that might be
considered predecisional or deliberative. I don't want
to go through all of them, I just want to look at the
third bullet. "A fact finding or fact-gathering meeting
following an abnormal event." So you have an abnormal
event somewhere and you're going to have a fact-finding,
would you consider that the kind of thing where a
resident inspector wants to see it and you would say
that's deliberative and/or predecisional and you can't

join us? Or how would you view that particular one?

MR. MULLIS: Is that directed at me?

CHAIRMAN HAMILTON: Yes, sir.

MR. MULLIS: First of all, I hate talking about
hypotheticals, because sometimes every event is unique,
but typically, we have not excluded the Board from a
fact-finding meeting following an off-normal event or an
emergency.

CHAIRMAN HAMILTON: And you don't think that
that order would --

MR. MULLIS: No.

CHAIRMAN HAMILTON: -- ever drive you to do
that?

MR. MULLIS: I do not. I do not see that
changing. Because that question has existed since I
was -- since I've worked for the Department and the
Defense Board was around. There are times when we need
to have frank and open discussions and having a Board
staff member sitting there is actually intimidating for
some folks so you don't get the free and open
discussion.

So that tension has existed for quite some time,
and it predates this order, and the way we've at least
handled that in Oak Ridge over the years is a
case-by-case basis. It's rare, but it has happened, and

I've called the resident inspectors and asked them not
to step into it and worked through that, then we would
give them a meeting after the fact.

I mean, there are sometimes where we need to
have meetings with our contractors as well without Board
staff there because there's contract-sensitive stuff.

So --

CHAIRMAN HAMILTON: Okay, thank you, that's a
very nuanced answer, and I appreciate capturing all
those thoughts.

Board Member Santos?

BOARD MEMBER SANTOS: Thank you. To
Mr. Roscetti, I mean, the interface order provides
guidance and direction to DOE personnel and contractor
personnel for interfacing with the Board and the Board
staff. In a similar manner, the Board staff provides
guidance to interfacing with the DOE and contractor
personnel. Can you discuss the guidance the Board staff
uses in interfacing with the Department of Energy and
its contractors?

MR. ROSCETTI: Yes, sir. The guidance given to
the Board's technical staff on interfacing with the
Department comes from Board policies and internal
technical staff procedures. The technical staff
receives initial and refresher training on these
policies and procedures.

So the Board currently has eight approved
policies which establish how the Board will carry out
its oversight mission. These policies include
requirements and guidance for staff on interfacing with
the Department. For example, Policy Statement 7,
Communication and Disposition of Safety Items states,
"No suggestion, implicitly or explicitly, shall be made
for DOE and DOE contractors to take any actions," by the
technical staff during their interactions with the
Department.

The technical staff's internal procedures
include guidance on how to conduct reviews, which are
the primary mechanism by which headquarters staff
interface with the Department and its contractors. A
number of the requirements in our internal procedures
were developed to align with the Department's previous
Interface Manual, as the Board had reviewed the
Department's manual prior to its issuance to ensure
consistency in interface requirements.

For example, one of the technical staff's
internal procedures on obtaining information from the
Department uses the approach and form that was included
in the previous manual.

BOARD MEMBER SANTOS: Thank you. And a question
to Ms. White, given the feedback and some of the
comments that you heard, will you and the Department
consider incorporating some of the formal feedback the
Board is providing to revise the current order?

ASSISTANT SECRETARY WHITE: I can't speak for
the entire Department, but certainly I've listened to
your input and understand some of your concerns, and we
really need to just get back with you on that.

BOARD MEMBER SANTOS: Okay, I'm sorry? The last
part?

ASSISTANT SECRETARY WHITE: We need to get back
with you on that.

BOARD MEMBER SANTOS: Oh, I look forward to it.

Thank you. Good.

CHAIRMAN HAMILTON: Thank you, Mr. Santos.

The last line of inquiry for this morning goes
to Ms. Connery.

BOARD MEMBER CONNERY: I think Ms. Roberson has
it.

CHAIRMAN HAMILTON: I'm sorry, did you have a
question, Ms. Roberson?

BOARD MEMBER ROBERSON: I did have a quick
followup if I could, to Mr. Santos' question. We talked
about the Request for Information. Maybe there are
others that were encompassed in the previous manual.

Are those encompassed in the new order?

MR. ROSCETTI: You're asking me?

BOARD MEMBER ROBERSON: Yes, sir.

MR. ROSCETTI: Could you repeat that question,
please.

BOARD MEMBER ROBERSON: Okay. Like the approach
and form that we had -- the Department and the Board --
had developed and agreed to in the manual, you said
we've adopted that into our internal procedure, but is
that captured in the new order?

MR. ROSCETTI: The new order is much more --
it's slimmed down.

BOARD MEMBER ROBERSON: So that's a no?

MR. ROSCETTI: It's a nuanced no. I would say
at a high level, it captures the basic premise of how we
previously interacted under the manual, but as far as
the very specific guidance that the manual contained,
that guidance is not contained in the new order.

And I'll use as an example the form for
requesting information. That was a very -- it was a
detailed process in the manual. That form is not even
included in the order, but we continue to use it to
formally request information at the staff level.

BOARD MEMBER ROBERSON: And I understand that, I
guess my question is maybe to Ms. White or Mr. Mullis,
who may be more active in responding to some of these.

We're assuming that we can rely on those arrangements
that were laid out in the previous manual, even though
they're not incorporated into the order. I don't know.
Is that a fair assumption for us to make?

ASSISTANT SECRETARY WHITE: I think it is. I
know the form that was referenced here has been in use
for years, and it continues to be in use. So I think
where systems aren't broken, then we're not going to fix
them.

BOARD MEMBER ROBERSON: I agree with that.

CHAIRMAN HAMILTON: Thank you, Ms. Roberson.

Board Member Connery for the last question this
morning.

BOARD MEMBER CONNERY: So the last line of
questioning is along the lines of my opening, and it's a
bit broader. I mean, we're here because, you know, we
find that the order is contradictory to our statute, but
at the base of it, it's about safety, and that's what
we're interested in, that's what the Department is
interested in, and I believe that's where our common
ground lay.

So the topic that I want to talk about is about
the Department's view and changes it's making to its
approach to ensuring adequate protection, both with
respect to the new interface order and changes that
we've seen in 10 C.F.R. 830 and its associated
documents.

This seems to be a moment in time where DOE is
trying to create more flexibility for itself, which I
understand, but it's also an effort, in my view, to
maybe reduce DOE oversight in some of these areas to
afford that flexibility. And I understand that's a
dynamic tension.

So for 30 years the Board has been a part of the
Department's overall safety framework. The Board and
the Department have had a collaborative relationship and
made a number of safety improvements to Defense Nuclear
Facilities that have otherwise occluded the Department's
internal mechanisms for DOE oversight. So now that DOE
appears to be changing their approach to nuclear safety,
and at the same time the hazards that you face, you in
particular in your environmental management cleanup
mission, are becoming more complex.

And I, again, recognize your need to balance
time to completion of the mission with safety, and
sometimes timely completion of the mission equals
safety. Have you considered whether or not this change
in philosophy, this reducing the role of DOE or Board
oversight, may have a negative effect on nuclear safety?
ASSISTANT SECRETARY WHITE: I wouldn't characterize it as a change in philosophy. For me, anyway, and for the leadership as well. I frequently say, don't even make me say, "and safely," because it's a baseline assumption in the work we do. And as I mentioned, I benefited from the safety culture as somebody who has been in the field doing the work, and it's extremely important. So I would not say that the Department is changing their philosophy on safety. The only way to do work is safely.

BOARD MEMBER CONNERY: I appreciate that. I think that my last -- I don't want to ask a question, because I understand where you stand on that. I think our concern is that Congress was clear when it created the Board that they were concerned about DOE's expert-based safety, as well as becoming complacent in its approach to nuclear safety. And I worry that trend lines tend to go up and down with regard to that.

And at this point in time, the Board has its own struggles, as, you know, is evidenced in the press, and the Department has been having its struggles with safety culture, you've got turnover in workforce, and again, complex, difficult tasks ahead of you. So I just don't know that now is the time to make broad changes that could have impacts to safety going forward.

ASSISTANT SECRETARY WHITE: So I hear your concern, and again, I just, I really want to emphasize this point, that we really cannot have successful projects without safe projects. It just can't happen. And Ms. Roberson can actually attest to the fact that at Rocky Flats, as production went up, safety statistics got better, and it had to do with the cadence of the work and the rhythm and being in the routine. Our workers are well trained, well qualified.

So I understand where you're coming from, but I think we are solid in this area. Absolutely.

CHAIRMAN HAMILTON: Thank you, Ms. Connery. I'd like to call on the Board members now to see if they have any last questions or comments before we take a recess.

Mr. Santos?

BOARD MEMBER SANTOS: No.

CHAIRMAN HAMILTON: Thank you, Mr. Santos.

Board Member Connery?

BOARD MEMBER CONNERY: No, thank you.

CHAIRMAN HAMILTON: Board Member Roberson?

BOARD MEMBER ROBERSON: Briefly, Mr. Chairman. Just in the event that you won't be here until the end of the hearing, I just want to say thank you for your contribution. I'm sure the other Board members, like myself, will take your input as a part of the total package. We're trying to determine what the Order means to the Board and the Department's going forward relationship. So thank you.

CHAIRMAN HAMILTON: Mr. Santos asked for a second.

BOARD MEMBER SANTOS: I want a second because in case you decide you need to leave, I can thank you and I really openly look forward to continued strong collaboration, continue the dialogue, because at the end of the day, you're absolutely right, we're both caring about the same thing, which is the American public health and safety. So, I'm here. Thank you.

CHAIRMAN HAMILTON: Thank you very much.

Hearing no other questions or comments from the Board, I want to thank you, Ms. White, and Mr. Mullis, for your participation this morning. We will take a 10-minute recess, at which time we will reconvene for the public comment period. We are in recess. Thank you.

(Whereupon, there was a recess in the proceedings.)

CHAIRMAN HAMILTON: Thank you. At this time, I would like to reconvene our hearing for Session 2, the public comment period. I will turn the proceedings over to our acting general counsel, Mr. Joseph Gilman.

Mr. Gilman?

MR. GILMAN: Thank you, Mr. Hamilton.

At this time, the Board would like to provide an opportunity for comments from interested members of the public. A list of those speakers who have contacted the Board is posted at the entrance to this room. We have generally listed the speakers in the order in which they contacted us. I will call the speakers in this order and ask that the speakers state their name and affiliation at the beginning of their comments.

There is also a table at the entrance to this room with a sign-up sheet for members of the public who wish to make comments but did not have the opportunity to tell us ahead of time.

To give everyone wishing to make a comment equal opportunity, please limit your comments to 10 minutes. I will warn each speaker when they have 90 seconds remaining and then again when there are 30 seconds remaining. The chair will then give consideration for additional time if the schedule allows.

Remarks should be limited to comments, technical information or data concerning the subject of this public hearing. The Board members may question anyone providing comments to the extent deemed appropriate.
The Chairman would like to introduce our first speaker, so I will turn it back over to you, Mr. Chairman.

CHAIRMAN HAMILTON: Thank you, Mr. Gilman. I am going to take Chairman's prerogative to introduce our first speaker, Captain Jack Crawford. Mr. Crawford served as a member of our Board from its inception in 1989 until 1996. He served with distinction with the Atomic Energy Commission as Principal Deputy Assistant Secretary for Nuclear Energy. He was Deputy Manager for Naval Reactors under Admiral Rickover, and most notably, he is a survivor of the sinking of the aircraft carrier USS Yorktown during the second world war. That trumps everything else in the bio, as far as I'm concerned.

Captain Crawford, when you made your remarks during the -- can you hear me, sir?

CAPTAIN CRAWFORD: Thank you, Mr. Chairman.

CHAIRMAN HAMILTON: When you made your remarks during our August hearing, you gave us some written remarks and written questions, which we included in the record to be asked to the Department of Energy. We have woven most of those questions into our lines of inquiry today. So I want to thank you for your submission, and I want to assure you that your experience, wisdom and insight continue to be highly valued. So thank you.

Mr. Crawford. Please, you have the floor. I am going to give you 10 minutes.

CAPTAIN CRAWFORD: Okay. I have three questions. The first is a statement, the Board's letter of September 17, 2018 states that the Board's primary concerns are in disclosure. They are in four categories as follows: Exemptions, public health and safety, determinations of access, and deliberative information. All appear to be capable of being resolved so as to be consistent with the Board's enabling legislation. Is it not, however, important that the Board appears not to consider -- does not consider lack of technical expertise within DOE a matter of primary importance? I say "appears" because it may be that you do, but it is not evident in the correspondence.

Second question: The agenda for Session 1 has as a goal, gather information on DNFSB interface and access to information, facilities and personnel managed by the Department of Energy Office of Environmental Management. Now, does this mean that the latter, namely the Office of Environmental Management, has line management responsibilities for efforts of the DOE line in building, operating and maintaining Defense Nuclear Facilities? Because if it does, this violates a fundamental principle of safety; namely, that responsibility for safety can only -- only be met by those responsible for doing the work involved. Others may help, but this does not lessen the responsibility of line management for safety. Moreover, the purpose of DOE -- or stated purpose of DOE Order 0140.1 is to emphasize line management and responsibility.

Finally, question number three: The Board's enabling legislation requires it to "raise the level of technical expertise in DOE substantially." Has the Board issued formal recommendations to DOE that this be done? And if they have, what have been the results?

Thank you, sir, for allowing me this opportunity to ask questions.

CHAIRMAN HAMILTON: And, Mr. Crawford, if you would offer those comments on paper, we will include those in the record.

CAPTAIN CRAWFORD: You and every member of the Board have an envelope with these questions, and I have a few extra copies that I will hand out.

CHAIRMAN HAMILTON: Well, thank you, sir.

CAPTAIN CRAWFORD: And moreover, anyone who writes me and gives me their name, I will mail them a copy of these questions, okay?

CHAIRMAN HAMILTON: Thank you, sir, for your continued service to the public.

Mr. Crawford. You have the floor. I am going to give you 10 minutes.

CAPTAIN CRAWFORD: Thank you for this opportunity, Mr. Chairman.

CHAIRMAN HAMILTON: I will turn the proceedings back over to our acting general counsel, Mr. Gilman.

MR. GILMAN: Thank you, Mr. Hamilton. I will confirm that I received his written comments.

So the next -- and thank you again for your statement, sir.

The next speaker is Ms. Kathy Crandall-Robinson of Tri-Valley CAREs and the Alliance for Nuclear Accountability.

MS. CRANDALL-ROBINSON: Thank you very much for the opportunity to participate in this hearing and to provide comments today. My name is Kathy Crandall-Robinson, and I am speaking for the Alliance for Nuclear Accountability and Tri-Valley Communities Against a Radioactive Environment. ANA is a network of more than 30 organizations located near DOE and NNSA Defense Nuclear Facilities, including Tri-Valley CAREs, which is near Lawrence Livermore Laboratory, and for over 30 years, ANA leaders have addressed nuclear weapons production and waste cleanup issues across the weapons complex and have developed really extensive experience working with DOE, NNSA and the Safety Board.

We are deeply concerned that Order 140.1...
constrains crucial oversight activities of the DNFSB and thereby endangers public and worker health and safety. Since its establishment, the Safety Board has played a vital role in protecting public health and safety. It has identified numerous hazards, like build-up of explosive and flammable glasses at Hanford waste tanks, fire hazards at WIPP, seismic dangers at Los Alamos, bulging and disabled waste storage from Oak Ridge, and many more.

Advice from the Safety Board has led to changes in safety design for facilities and corrective actions, and safety culture improvements at sites across the complex. Stakeholders and community leaders have very high praise for the information that they learn about the sites from regular site reports provided by the DNFSB.

A particularly egregious problem that we find with Order 140.1 is that it redefines and limits the role of DNFSB in protecting worker safety and health. This is an area where the Safety Board has played a crucial role, and of particular illustrative story about this was a recent Santa Fe, New Mexico story entitled Exposed: The Life and Death of Chad Walde. This news article details Mr. Walde's journey working in high radiation areas at Los Alamos National Labs from fall of 1999 to fall of 2014, and cites DNFSB reports as evidence of exposures.

Walde received high doses, with scrubdown on more than one occasion, and was told to stay home at various periods of time. In 2014, he was diagnosed with stage 4 glioblastoma, a rare brain cancer. When he applied for medical care and compensation, the exposure records were gone, but notably, the DNFSB reports remained. Unfortunately, in early 2017, Mr. Walde died at the age of 44.

We do recall also that in the decades before DNFSB existed, major accidents, spills and releases were considered routine and justified in the service of a mentality of production first and safety second, at best. And I'll note, because Rocky Flats was mentioned, in the days before DNFSB, Rocky Flats was once a scary place. I know because I grew up in Boulder.

Order 140.1, with its degradation of DNFSB's role and authority, threatens to send us on a path back to a careless era as if this were a time when safety concerns and dangers at the nuclear weapons facilities are shrinking. They are not. Instead, there are aging facilities, facilities operating with serious safety concerns have been raised, and some facilities where increased production plans could lead to novel dangers.
safety perspective will be most helpful in developing orders, procedures and requirements that help to address safety concerns at the earliest stage. The Board does not have the regulatory authority to sanction or stop a decision; instead, its value really is in providing sound information and advice. That advice is most useful at the deliberative and predecisional phase. This is especially true with access to early construction design. It is less helpful and more expensive for safety design flaws to be discovered at later stages. We always recall that UPF design fit fiasco. Taken together, the order constrains the flow and access to information. These constraints will likely have a chilling effect over time on DNFSB site representatives and inspectors, and the information they seek, as well as the workers and contractors and the information they willingly provide. Information flowing to the public and stakeholders at the sites were also concerned.

Mr. Gilman: Ninety seconds.

Ms. Crandall-Robinson: The goal of preventing safety incidents at the earliest stages is thwarted by what really seemed to be adversarial bureaucratic hurdles. We are especially worried that there were so little iterative and collaborative discussion in developing this order with the Safety Board, with stakeholders, workers and contractors on the sites, and apparently very little discussion with Congress. On August 27th, ANA sent a letter calling on DOE to rescind the order, or at least hold it in abeyance while public hearings at each site subject to DNFSB oversight could be held. It's three months later, we have not received a response from the Energy Secretary to our letter either. On November 27th, just yesterday, we sent -- Mr. Gilman: Thirty seconds remaining.

Ms. Crandall-Robinson: A letter to the Senate and House Armed Services Committee requesting the annulment of DOE Order 140.1. We want to really thank the DNFSB and the efforts that you have made at these hearings, and the letters, the redline strikeout effort, all of that. We would like to ask in addition to the hearings you have planned, one additional hearing in Washington State to be focused on cleanup issues at Hanford, and we call on the DNFSB to continue to exercise the full extent of your authority in imposing the constraints that limit access to facilities, people and information that are at the heart of this order.

Our members, including site workers, and our communities, depend every day on DNFSB diligence. Thank you.

Mr. Gilman: Thank you.

Ms. Connery has a question.

Board Member Connery: So I just want to thank you, Ms. Crandall-Robinson, for your cogent and thoughtful remarks, and it's good to know that you have contacted both DOE and the Hill about the concerns of your organizations, and I guess I just have a quick question. I often interact with the Tri-Valley CAREs and the Hanford -- the HAB, the Hanford Advisory Board, when I go out to the site. I'm just wondering, can you describe a little bit about the interactions you have on site with the Department of Energy and the contractors to get some of your concerns across? I mean, other than writing a letter, do you guys have any mechanisms for having interaction?

Ms. Crandall-Robinson: Well, there is a lot of interaction at the individual sites. I know we have really good relationships with -- we don't have -- there is not a representative at Livermore, but there is a very fine cognizant engineer, good relationships there. And, you know, I think also good relationships with the site-specific advisory boards at each of the sites.

And the reason that the Alliance for Nuclear Accountability was formed right around the same time as DNFSB is that we were seeing many similar issues come up at each of the sites, and so formed this network to work together. And as that has happened, over the years, we have interacted a great deal with DNFSB from across the sites.

Board Member Connery: Thank you.

Mr. Gilman: All right. The next speaker is Robin Mills from Peace Farm, Carson City, Texas.

Mr. Mills: It's actually Carson County, Texas.

Mr. Gilman: I'm sorry.

Mr. Mills: Thank you. Robert B. Mills, IV.

Thank you for noticing, I am the great-great-great grandson of the builder of the Washington Monument. I grew up in Cincinnati, Ohio, I went into the Navy and graduated from Navy Nuclear Power School. Captain Crawford: Congratulations.

Mr. Mills: Thank you, Captain Crawford.

I served honorably in the Navy, and when I got out, I spent some time focusing on Fernald, and that was early 1984. I spent several years of my life trying to find out exactly how much waste and crime had been committed in Fernald from approximately 1951 through the mid-'80s. And eventually, we were able to get John
Glenn involved, primarily Lisa Crawford, thank you, Lisa, and her organization Fernald Residents for Environmental Safety and Health. Once John Glenn got involved, he couldn't get through either. He was being lied to. 

Now, I notice that our DOE people have left. They don't want to hear this, but it was outrageous. People were being murdered by our Government through incompetence, and that's what John Glenn saw and why he started the legislation which resulted in DNFSB in 1988.

So you might say that I was the butterfly that resulted in your organization, being kind of amusing. The plants are getting older. The materials are getting stressed. Workers are older and they're getting lackadaisical about what they're doing. Safety is expensive. Safety is slower. Safety is frustrating. But I just finished reading a very long expose on what happened at Fukushima by Bill Vollmann called No Immediate Danger, and the results of not being safe are pretty severe. It's outrageous the bags and the radiation that they had to deal with. Essentially, a small mistake resulted in a huge disaster costing trillions of dollars.

The public has a right to know that things are being done safely, and I do appreciate DNFSB, and your efforts. I've noticed back in 2015, you had a nice report on Pantex where you made specific recommendations on the physical site safety, and we at the Peace Farm have been saying the same thing for many years. I was living back there in the '90s, and I was saying the same thing. Thank you very much.

So DNFSB has made some great moves, but now, as far as we can tell, this Order 140.1 is an attempt to castrate the efforts of DNFSB and make it so that if anything embarrassing to the Government comes out, it can be squashed. That's the way we see it at the Peace Farm. The Peace Farm is one of the member groups of ANA.

I want to say that I want to be emotional here, because too many people have been analytical about it. And I think that the public deserves someone to say, No! Thank you.

MR. GILMAN: Thank you, sir. The next speaker is Megan Casper of Energy Communities Alliance.

MS. CASPER: Chairman Hamilton, members of the Board, I appreciate the opportunity to provide comment here today on behalf of the Energy Communities Alliance. My name is Megan Casper. I serve as the program manager for the Energy Communities Alliance, or ECA. ECA is an organization of local communities adjacent to or hosting U.S. Department of Energy and National Nuclear Security Administration facilities. Our communities are those that will be directly impacted by how policies such as Order 140.1 are implemented.

Since the DNFSB hearing on August 28th, 2018, ECA has met with DOE officials to share our concerns and to better understand DOE's reasoning for the new order. It was beneficial to speak with DOE directly and explain that while we agree with many of DOE's goals, such as and including the need to improve operations, safety and decrease costs, the order needs clarification.

We noted to DOE that in its current iteration, the order could negatively impact the DNFSB's efforts to provide independent oversight, a critical function of the Board. We also identified that our primary concerns are in ensuring the safety of workers in communities at the sites.

After our meetings with DOE, we concluded that with some modification to the order, ECA could, in fact, support implementing changes moving forward. We ask that DNFSB identify specific suggested language changes to the order and meet with DOE on the proposal to try and resolve differences.

We found it entirely encouraging in Mr. Santos' remarks today that the Board has created and reviewed a redline of this order. We recommend that the DNFSB share this redline with DOE and with relevant stakeholders.

We think this will help to clear up confusion and reconcile misaligned interpretations of the order. We also think it will ensure that the order language codifies the intent of DOE and not something else.

Primary clarifications that ECA would like to see include, but are not limited to, number 1: Access. DOE and NNSA staff seem to testify at the last hearing that the DNFSB would have access if requested to Hazard Category 3 or below sites, but the order appears to restrict this access. We understand that there is some reasonable terms that each party, meaning DOE and DNFSB, could agree to that in no way impacts the statutory authority of the DNFSB.

Number two: Oversight on site. The language attempting to define "public health and safety" as only the health and safety of individuals located beyond the site is unclear. The language should be stated in a way that does not give the impression that the DNFSB should not have any oversight of on-site activities, particularly since all problems that have ever occurred off-site are caused by on-site activities.
had conversations with DOE is helpful. We haven't actually had a sitdown communication with you at all, we have only received comments in this way. You talked about the need for DOE and the Defense Board to work together to solve problems, and yet your recommendation is that we start with their order and then modify their order to make sure it meets their intent. So I guess my question for you is, you know, as the Defense Board, I would have thought that the solution set would be for DOE and for the Defense Board to sit down and perhaps come together for a Memorandum of Understanding rather than try to rewrite an order that's problematic at its base. And I just wanted to know if you had any reaction to that.

MS. CASPER: Sure. I think there's definitely a question of what should have been done, but that's not one that I think ECA or its members in discussion of this order and in discussion of how we are to respond to it, that's not really what we've talked about. Instead, it's more discussion of what needs to be done now. So rather than dealing in hypothetical what-ifs, what could have been done, what should have been done, what can be done now is the question we're hoping to address. And at the point where DOE has already as of I think it was May this year implemented this order, Order 140.1, how can we moving forward ensure that it is amended or adopted to incorporate stakeholder interests and to incorporate the concerns that the DNFSB has. So I appreciate the point you're making, but I think that's not the way that ECA has been approaching it.

BOARD MEMBER CONNERY: Okay. Thank you. MS. CASPER: Thank you. MR. GILMAN: All right. The final speaker is Lydia Dennett of the Project on Government Oversight. MS. DENNETT: Thank you very much for the opportunity to comment today. My name is Lydia Dennett, I am an investigator with the Project on Government Oversight, or POGO. POGO is a nonpartisan independent watchdog that investigates and exposes government waste, corruption and abuse of power. We work to support the independence of oversight agencies and amplify their findings to achieve a more open and accountable Federal Government.

The Defense Nuclear Facilities Safety Board is one such organization, and POGO is concerned that this DOE Order 140.1 significantly and improperly undermines the Board's access to Defense Nuclear Facilities and personnel and restricts its ability to perform
meaningful oversight of the matters that most affect
defense nuclear sites maintain the highest levels of
safety and security standards, and this order appears to
be intended to underscore the Department's commitment to
this and its possibility to manage risks and hold
management accountable, but POGO's concern is that it
may instead unduly restrict the Board's ability to
thoroughly review and assess potentially catastrophic
safety issues.

POGO is particularly concerned about the order's
requirements for how Department contractors should
respond to requests for information from the Board. The
DOE outsources the operation and management of its
Defense Nuclear Facilities to a select group of
contractors and contractor consortia, and the vast
majority of workers at these sites are contract
employees. In order to get the most accurate and timely
information, the Board needs to be able to work directly
with the contractors managing the facilities.

Under this order, these contractors would be
required to refer all requests for information to a
Departmental site liaison to determine an appropriate
response, and only after a response from the site
liaison would they be able to officially respond to the
Board. This seems like an unnecessary and impractical
bureaucratic hurdle, especially since Government
employees at these sites are already often overburdened
with other contract management issues.

POGO is further concerned about the role
contractor organizations may have played in the
formulation of this order. At the August hearing
earlier this year, DNFSB Board members referenced a 2017
memo from numerous DOE contractors requesting an
evaluation of the Department's manual for working with
the Board for revision and conversion into an order,
indicating this process may have been undertaken
partially at the request of the contractors.

In response to your questioning, DOE confirmed
that the team in charge of drafting the order did not
formally incorporate any input from worker unions, the
public or even the Board itself. We've seen that
contractors have long complained that the Department's
oversight practices are overly burdensome and requests
for information and data can be time consuming and may
not always result in recommendations that support the
contractors' interests.

This change in policy makes it easier for
contractors to hide under details or information that
they may not want to come to light, but we feel strongly
that DOE's obligations are to the public, and the
interests of its contractors should only be considered
with an eye toward what is in the best interest of
taxpayers.

Time and time again, Government oversight
groups, including POGO, have found that the Department
has been unwilling or unable to hold its contractors
accountable. Congress created the Board to provide
additional accountability and review for issues that may
affect the safety of the communities around and within
describing. As the Department embarks on a trillion
dollar, 30-year plan to modernize the nuclear weapons
stockpile, it should not be curtailing any kind of
safety oversight.

I would further like to echo the other comments
that have been made today regarding some of the other
issues. In particular, the narrowing the definition of
public safety to exclude worker safety. The Department
has not yet provided a compelling reason for so
dramatically reducing the scope of the Board's
jurisdiction, but the Board's track record shows how
important its work is for addressing these issues in
particular. Its recommendations have led to several
major worker safety improvements across the complex, but

without an official formal recommendation, the
Department, the Board and the public cannot track these
concerns or hold facilities accountable if they fail to
address risks to worker health and safety.

So we feel that the Department should welcome
the Board's involvement and participation in developing
an interface guidance that facilitates oversight rather
than restricting it. We strongly encourage DOE to
revise this order or put together a Memorandum of
Understanding and work with the Board so that they can
continue to issue robust and meaningful safety
recommendations. Thank you.

MR. GILMAN: That's the final speaker on our
list.

CHAIRMAN HAMILTON: Yeah, I just wanted to
briefly make a small correction to your comments. The
Department of Energy did, in fact, reach out to us prior
to the issuance of this order to get an input. In the
first hearing, I gave the specifics on that. I don't
have the dates with me, but in effect you can go back
and look at the first hearing to get the details.

The administrator of the NNSA offered me and the
Board a very short period of time to give very
high-level comments via just an email, but you are
correct, there was no formal review by the Board or its
MR. MASSEY: I put my name on the list, I wasn't going to say anything, but I thought I could. My name is Herbert Massey. I have 47 years of nuclear experience, 21 commercial, 24 I worked on the Board's staff, and I have lots of comments in the past.

My feeling is probably in between the two things staff, and I have lots of comments in the past. I remember those words were said in probably 1992 I think. And I remember Mr. Crawford one time, he said his goal would be looking down some day and seeing some of the staffers dispersed out in the DOE, and I think some of that has happened. Matt Moury and Ike and so forth. I heard him about line managers being responsible. The Board issued a recommendation 93-3 to improve the technical capability of the DOE people, and that was 25 years ago.

And so the question is, well, where is that at? There are good people in DOE. I've seen some. It depends on where you look and stuff and what level. And I've seen some people -- I've seen a lot of good people, but, you know, there are holes here and there, and I remember Mr. Crawford one time, he said his goal would be looking down some day and seeing some of the staffers dispersed out in the DOE, and I think some of that has happened. Matt Moury and Ike and so forth. I remember those words were said in probably 1992 I think.

One of the things I think that would help, and I agree with what Mr. Crawford said, I learned a lot from him about line managers being responsible. The Board issued a recommendation 93-3 to improve the technical capability of the DOE people, and that was 25 years ago. And so the question is, well, where is that at? There are good people in DOE. I've seen some. It depends on where you look and stuff and what level.

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In this hearing. Again, I want to thank our DNFSB staff.

25 And I just don’t know why. I just find that very hard

to believe. That’s all I want to say.

2 CAPTAIN CRAWFORD: Mr. Chairman, you are looking

at the proudest father on the planet.

3 CHAIRMAN HAMILTON: Just for the record,

Mr. Crawford, Jr., there are DOE executives here, I’m

not going to identify them, but they’re also monitoring

this. So I get your point, but I just wanted to modify

it a little bit and make sure you’re clear.

6 CAPTAIN CRAWFORD: I stand corrected. Thank

you.

7 MR. GILMAN: Is there any other members of the

public that would like to make a statement?

8 (No response.)

14 MR. GILMAN: Hearing no response, I thank each

of our public commenters for speaking. At this time I

will turn the proceedings back over to Mr. Hamilton for

closing remarks.

18 CHAIRMAN HAMILTON: Thank you, Mr. Gilman. I

will now turn to my fellow Board members for their

closing remarks, if any.

21 Board Member Santos?

22 BOARD MEMBER SANTOS: Thank you, Mr. Chairman,

and thank you again to the Department of Energy

officials that witnessed today, and all the participants

in this hearing. Again, I want to thank our DNFSB staff
and all the support personnel that made today's hearing possible, as well as my fellow Board members.

Ensuring public health and safety, that's what it's all about, and I take that very seriously. So our independent nuclear safety oversight mission continues to be extremely important, even after the 30-year history of the Board. Especially when one studies the challenges that are currently facing the Defense Nuclear Complex.

The issuance and implementation of Order 140.1 is creating external pressures to this agency with the potential to undermine the effectiveness of the Defense Nuclear Facilities Safety Board in ensuring adequate protection of public health and safety. The message we continually receive from the Department is there's no change.

So I ask myself, so why issue this order? I just can't reconcile the language of the order with the theme of there's no change. So I am concerned that things will change as people implement this order. I hope I'm proven wrong, and I do remain optimistic that we will be able to find a way to truly collaborate with the leadership of the Department, to truly have a dialogue, to revise the order, to improve the interface between the two agencies, or whatever other solution is out there. This is too important.

However, I need to recognize that it's equally important that the -- that we the DNFSB address our internal issues that are also creating pressures and undermining our performance and effectiveness in ensuring adequate protection of public health and safety.

These internal issues continue to be documented in several recent studies, there is some press coverage like Ms. Connery mentioned, such as the Inspector General reports and a study conducted by the National Academy of Public Administration. That is why I support and look forward to the upcoming public business meeting on December 20th, 2018, so we as a Board can address internal issues with the same enthusiasm and collaboration that we are using to address the external issues presented by Order 140.1.

I continue to express to my fellow Board members that I believe the Board should be equally transparent and timely until the December 20th upcoming meeting and that is why I continue to encourage that we have a forum similar to this one today where we are livestreaming the meeting and we provide the public with an opportunity to provide comments.

So this concludes my statement. Thank you,
workers. Yes, they are highly trained, they know their hazards at their facility, if they're in that Defense Nuclear Facility, but they could be within the site boundaries and not have exquisite knowledge of the hazards of the facility that's collocated with them. They could be the delivery person providing consumables to one of the buildings. They could be folks on the ground who are training who don't have understanding of those hazards. And they're going to be impacted and it's not going to be a good day for anybody in the Department or anybody in the Defense Nuclear Facilities Safety Board and the public in general.

So I think we have to take those things into consideration. And again, we look forward to interactions with the public. You are our stakeholders as well. Our responsibility and the mission of our agency is to oversee DOE, but it's also to provide you with the confidence that the Department is doing its job. And therefore, the Department should have a vested interest in making sure that we can do our job well, and that we can project that confidence to the public, because again, everybody comes into their job expecting safety, and nobody comes in thinking that I'm going to screw up safety today. But it does happen and I think we have to be cognizant and cautious in that area.

So thank you very much.

CHAIRMAN HAMILTON: Thank you, Ms. Connery.

Board Member Roberson?

BOARD MEMBER ROBERSON: Thank you, Mr. Chairman. I didn't plan on making a closing statement, but I do have to tell you, I so appreciate all the comments from the public. I mean, you are articulate, and I think it always helps put things in perspective. There's no grand standing, it's not about a power struggle between DOE and the Board. It really should be focused on something Mr. Crawford, Jr. said. He said, I'm a teacher and a coach. I don't know anything about this. Well, you're your dad's son, you know more than you think; however, the reason we do this is so you can do what you do and feel confident that the parties involved in ensuring safety is occurring where the operations are occurring are working, and I want to thank every speaker and thank you not just for your time, but for your comments. Thank you.

CHAIRMAN HAMILTON: Thank you, Ms. Roberson. I have one personal comment before we close. I am left with the same sense that I had after the first hearing. I like what I hear from the Department of Energy on this order, I don't like what I read in the order. Thank you. This concludes my personal closing remarks.

I would now like to again thank the witnesses and the organizations and speakers today for supporting this hearing. I also want to thank all those who attended, either in person or via the Internet. Our goal for this hearing was to gather information on the Department's Environmental Management interface with the Defense Nuclear Facilities Safety Board. The Board's access to facilities, information and personnel and the potential impacts to the Board's Resident Inspector Program. This was the second in a series of up to three hearings regarding DOE Order 140.1. The next hearing will be in New Mexico in February of 2018, specific date yet to be determined.

BOARD MEMBER SANTOS: Nineteen.

CHAIRMAN HAMILTON: Yes, '19, thank you, Mr. Santos. February 2019. The specific date is yet to be determined. This morning we've heard testimony from the Assistant Secretary for the Office of Environmental Management and the Manager of the Oak Ridge Office of Environmental Management, as well as public comment, and so thank you again for making those comments. We do appreciate it. The Board will consider the information gathered this morning to inform any actions that we may take regarding these issues. Once again, I thank everyone for participation at the hearing. The record of this proceeding will remain open until December 28th, 2018. This concludes the public hearing of the Defense Nuclear Facilities Safety Board. We are adjourned.

(Whereupon, at 12:32 p.m., the hearing was adjourned.)
CERTIFICATE OF REPORTER

I, Sally Jo Quade, CERT, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

SALLY JO QUADE, CERT