John T. Conway, Chairman
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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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April 1, 2004

The Honorable Robert Gordon Card
Under Secretary of Energy, Science and Environment
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1000

Dear Mr. Card:

The Defense Nuclear Facilities Safety Board (Board) continues to work energetically with the Department of Energy (DOE) to construct satisfactory regulations for the protection of the health and safety of workers at DOE facilities. In parallel with this effort, the Board has come upon use of the term "site/facility management contractor" in several proposed DOE directives. This specific term first came to the Board's attention in the spring of 2003 in the context of draft revisions to DOE Order 251.1A, *Directives System*. Even prior to that, however, the Board wrote to you on January 24, 2003, concerning your proposal to restrict "the applicability of DOE Orders to only major facility management contractors."

During the past year, a series of meetings and conference calls between the Board's staff and its DOE counterpart have made no progress toward understanding the meaning and purpose of "site/facility management contractor." Most recently, this term is used in a proposed revision of DOE Order 251.1A (draft dated March 4, 2004), where the following definition is given:

> A Site/Facility Management Contract is a contract that tasks the contractor with responsibility for the stewardship of a DOE-owned Site/Facility, including the operation and/or maintenance of its buildings, infrastructure, and other assets. A Management and Operating Contract is a type of Site/Facility Management Contract that tasks the contractor with responsibility for managing and operating an ongoing, continuing DOE mission at the site/facility such as weapons production or the conduct of scientific research and development at a Federally Funded Research and Development Center or other laboratory. An M&O contract is awarded pursuant to and consistent with FAR 17.601 and DEAR 970. In the absence of a continuing DOE mission, a contract for the environmental remediation and closure of a site/facility where the contractor maintains primary responsibility for site/facility stewardship is a Site/Facility Management Contract, but usually will not be structured as a Management and Operating Contract.

The impact of this definition on defense nuclear facilities is unclear. To achieve a prompt common understanding of your proposal, and to have DOE Order 251 revisions issued without further delay, the Board requests, pursuant to 42 U.S.C. § 2286b(d), a briefing within 15 days of receipt of this letter addressing the following questions:

1. What is the purpose of the use of this term?

2. (a) Which existing contractors performing hazardous work at defense nuclear facilities would be excluded under the proposed definition? (b) What criteria were used to determine inclusion or exclusion? (c) How are these criteria documented for application to future contracts?

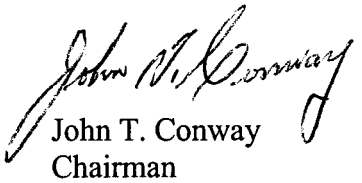
3. With respect to the contractors identified in question #2, what mechanism will be used to apply the safety requirements embedded in DOE Orders to those contractors' activities?

4. How have DOE program and field offices responsible for assuring safety at defense nuclear facilities been informed of the effect of the proposed change and provided detailed procedures to be followed in imposing safety requirements on contractors falling outside the class of "site/facility management contractors?"

5. What is the relationship between the proposed change to DOE Order 251.1A and the DEAR clauses regarding (a) integrated safety management and (b) laws, regulations, and directives?

6. The proposed change to DOE Order 251.1A includes direction to develop changes to the DEAR clauses in cases in which the owner of a DOE Order believes that some or all of the order's requirements should be applied to contractors other than "site/facility management." Does DOE contemplate that rulemaking would be necessary in such cases?

Sincerely,



John T. Conway
Chairman

c: The Honorable Linton Brooks
Mr. Mark B. Whitaker, Jr.