

[DNFSB LETTERHEAD]

February 13, 1996

Mr. Robert R. Nordhaus
General Counsel
U.S. Department of Energy
Room 6A-245/FORS
1000 Independence Avenue, S.W.
Washington, DC 20585-0103

Dear Mr. Nordhaus:

You have requested Board comments on Department of Energy (DOE) revisions to Policy Statement 450.2 (Identification, Implementation, and Compliance with Environment, Safety and Health Requirements). Our principal concerns are similar to those communicated to you previously by our General Counsel on initial drafts of the policy statement and the version that was issued by DOE as interim policy in September of 1995.

One of the purposes for issuance of the Policy Statement is fulfillment of Commitments 1.1 and 2.1 in DOE's July 21, 1995 Implementation Plan for Board Recommendation 94-5. DOE was to provide guidance on how the various processes relating to the establishment of safety requirements fit together. Policy Statement 450.2 leaves vague or unanswered a number of critical questions, not the least of which are the definition of "necessary and sufficient," how it is to be used, and how it will be integrated with other elements of DOE's safety management plans.

In the section entitled "contractual mechanisms," DOE still does not unequivocally state that DOE review and written approval are required for any "modification or substitution of ES&H requirements in DOE Orders with a set of requirements determined to be necessary and sufficient". This is emphasized by the fact that the substituted set of safety requirements by a contractor "would serve as the basis for compliance and enforcement" by DOE without DOE approval. DOE cannot abrogate its responsibility for safety which is assigned to it by statute, hence DOE should not grant to its contractors the right to unilaterally modify or eliminate safety requirements.

With regard to Policy Statement 450.2's treatment of guidance documents, including technical standards for nuclear safety, the Board reiterates the position it took during the public meeting at DOE on September 20, 1995. Contractors should be allowed to substitute their own methods for achieving compliance with safety requirements, after demonstration, and approval by DOE, that alternative methods provide equivalent or better levels of safety to those specified in the guidance or technical standards. The Board believes DOE's policy statement should be amended to include the additional safeguard afforded by an equivalence determination or mandatory justification for the substitution.

We were also unable to ascertain from the Policy Statement exactly what is contemplated by the various types of "integrated safety reviews." Such reviews, if truly integrated, should be consistent with the principles of Board Recommendations 94-5, 95-2, technical report numbers 5 & 6, and DOE's implementation plans. The Board notes that page 2 of the policy, at the top, lists

elements of the integrated safety review including Safety Analysis Reports, hazards analysis, Standards/Requirements Identification Documents, necessary and sufficient process, etc. These are elements of an integrated safety management plan. Individually, they do not constitute an integrated safety management plan or the sole basis for an "integrated safety review." Therefore, the Board suggests that page 2 state that these are examples of "elements of an" integrated safety review process.

Finally, in the section entitled "implementation of requirements," the first paragraph could leave a false impression. The statement acknowledges that safety requirements for some workplaces may be retained if application of existing programs, plans, practices, and procedures derived from DOE Orders is appropriate. The policy then differentiates other workplaces where implementation measures derived from "industry standards and commercial practices" are appropriate. This could lead to a conclusion that industry standards and commercial practices played no role in the development of existing programs, plans, and practices embodied in existing Orders. They did, in such diverse areas as fire protection, emergency preparedness, hazards analysis, and radiation protection. The Board suggests a rewrite of this paragraph.

DOE and Board Members have committed to a series of continuing dialogues on Recommendation 95-2 and DOE's vision of the necessary and sufficient process. It might be prudent to postpone issuance of Policy Statement 450.2 until conclusion of those discussions.

Sincerely,

John T. Conway
Chairman

cc: The Honorable Thomas P. Grumbly
Mr. Mark B. Whitaker, S3.1