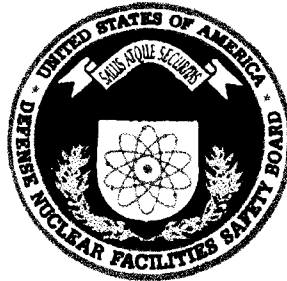


**COMMENTS PREPARED**  
**FOR**  
**PRESENTATION TO THE**  
**ENERGY FACILITIES CONTRACTORS GROUP**  
**EXECUTIVE COUNCIL MEETING**  
**CRYSTAL GATEWAY MARRIOTT HOTEL**  
**ARLINGTON, VIRGINIA**  
**MARCH 31, 1999**



**BY**  
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**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

Note: The views expressed here are those of the author and do not necessarily represent the views of the Board as a whole.

I want to thank Dr. Van Hook for the opportunity to talk with you once again. You are the people who are entrusted with the protection of the public, the workers, and the environment as you satisfy the various missions of the Department of Energy (DOE). The sharing of your experiences, both good and bad, is very important to the continuing efforts to ensure that the work of DOE is done safely.

I called Bill Kaspar the other day to find out the agenda for your meeting. I especially wanted to know who the other speakers might be and the general subject matters they might address. My interest was to avoid duplication if possible. Bill, in effect said to worry not. It would do no harm to hear the same topic or issue from different perspectives. His comment made me think of a Sherlock Holmes vignette I had just read in a FEDmanager newsletter. It went like this:

A particularly difficult case had taken Sherlock Holmes and Dr. Watson to the wilds and forced them to camp out. Late one evening after they had retired, Holmes said to Watson: "What do you see?" Watson replied: "I see the Moon, the Milky Way, and millions of stars." "What does it make you think?" Holmes asked. "It makes me think how small and insignificant we are" Watson replied. "What do you see, Holmes?" "I see the same things you do" said Holmes. And what does it make you think, Watson asked. "It makes me think someone stole our tent!"

There are few who are as perceptive as the legendary Holmes and I make no claim to be one of them. Nonetheless, like Watson, I can share with you a few things I see relative to the Defense Nuclear Facilities Safety Board (Board) and DOE's safety initiatives and tell you what I think.

## **1. DEPARTMENTAL LEADERSHIP CHANGES**

### **What Do I See:**

*A departmental leadership that has changed often during the past decade. Since 1989, the Board has dealt with four different Secretaries and three acting Secretaries, six different Deputies or Acting Deputy Secretaries and similar changeovers of Assistant Secretaries. As you know, only recently have nominees for the new Deputy Secretary and the Assistant Secretary for EM been acted upon by Congress, following long delays in the appointment and confirmation processes. The nominee for Assistant Secretary for EM has not yet been confirmed by the Senate as a whole. While the senior management of DOE's field offices has until recently remained fairly stable, there is considerable changeover taking place now.*

### **What Do I Think:**

Changes are not necessarily bad if (1) skilled administrators willing to make hard decisions are appointed, (2) the learning period is reasonably short and (3) some constancy in policies and

programs is maintained. Thus far Secretary Richardson has displayed these characteristics. For example, the Secretary has announced the preferred option for the future production of tritium and has aggressively pressed for the opening of the WIPP facility. The Secretary has also put a pause in the program advocated by a previous Secretary for the transfer of DOE's authority to regulate nuclear safety to external agencies and elected instead to more aggressively implement and enforce DOE's nuclear safety requirements. Nonetheless, this rapid turnover of top level management, some of whom have not stayed in place long enough to learn well either the missions of DOE or the career staffs upon whom they must depend, does not make for stability nor constancy in direction or emphasis. While in theory, the Deputy Secretary has the role of Chief Operating Officer for DOE, it has not been evident during this past decade that this office has focused on the safety management of the many industrial facilities and operations that make up the DOE complex. While capable administrators have occupied this slot, the turnover rate has just been too frequent for them to make long lasting influences.

This situation, notwithstanding, I believe that with respect to safety management, DOE is on a course that promises to be held constant. Three Secretaries and one Acting Secretary have endorsed the concept of Integrated Safety Management. The requirements for implementation have been embedded into Acquisition Regulations and sites are well on the way to having effective programs in place. These programs are not where the Board would want them to be yet, but significant progress is being made.

Secretary Richardson on March 3, 1999, announced a number of new safety initiatives intended to strengthen DOE's safety management program. The one I consider of major significance and promise is the establishment of a Safety Council to be chaired by the Deputy Secretary. The Council is envisaged to include Secretarial Officers and Field Managers and will serve as forum for dealing with cross cutting safety initiatives and issues. In my view this group of senior administrators will need to be supported by career senior safety staff if it is to serve its intended function. Such a staff could go a long way to maintaining corporate history and constancy in direction as administrations and administrators change. I suggest that you major federal contractors work with your field federal counterparts to seek opportunity to identify for the Council crosscutting issues as you see them. In addition, I encourage EFCOG leadership to seek opportunity for direct periodic briefings to the Council.

## **2. CONTRACTOR ACCOUNTABILITY**

### ***What Do I See:***

*Increased pressures by Congress and the Department of Energy for greater accountability for implementation of nuclear safety requirements.*

### **What Do I Think:**

Congressional pressures are likely to become evident as deliberations take place on the extension of the Price Anderson Act. This Act was first passed in 1957 to set up a system of insurance to (1) encourage development of the nuclear industry by providing to private industry financial protection for legal liability resulting from a nuclear accident and (2) protect the public by ensuring that funds would be available to compensate victims for damages and injuries should they be subjected to harmful radiation exposures from a nuclear accident. A major accident resulting in major offsite consequences was the main concern. In the Price Anderson Amendment Act of 1988, Congress made indemnification requirements mandatory in all DOE contracts and established a system of civil penalties for DOE indemnified contractors, subcontractors and suppliers. The Amendments Act also required NRC and DOE to submit reports in 1998 relative to the renewal of the indemnity provisions. I understand that DOE has prepared such a report and is recommending that the DOE indemnification provisions be continued without substantive change. The history of Price Anderson indemnity provisions is such that I believe its renewal to be highly likely. However, I also believe Congress is likely to admonish DOE to further invigorate its enforcement of nuclear safety requirements under the provisions of this law.

As you know, requirements that DOE has established for safety of its nuclear activities are quite extensive. They are a mixture of self-imposed nuclear safety requirements established by Rules and directed at safeguards against the type of nuclear accidents for which Price Anderson was enacted (public protection) and requirements established by contract terms and conditions to protect workers and the environment. The latter stem largely from statutes and regulatory requirements of other Federal regulatory agencies. The former are those subject to enforcement under the provisions of Price Anderson and the latter more often under contract provisions related to fee awards. Integrated Safety Management requires that all applicable requirements be addressed as an integrated whole.

My concern is the achievement of the balance that needs to be maintained in dealing with all three of these protected sectors (public, workers, environment). The response to pressures for a more aggressive Price-Anderson enforcement program (public safety emphasis) should not be cause for diversion of resources or attention from enforcement of protective programs for workers, and the environment.

### **3. FEDERAL WORK FORCE ACCOUNTABILITY**

#### ***What Do I See:***

*Clearer definitions of functions and responsibilities*

**What Do I Think:**

This is a long needed action on the part of the DOE's senior leadership. Secretary Richardson can be credited for giving priority attention to this need. Accountability cannot be reasonably expected unless the workforce, including the senior administrators clearly know what is expected of them. In the near future, I expect changes in assigned functions and responsibilities. These are likely to be the outcome of internal considerations of a number of reports critical of the way DOE has performed, or not performed. These include critiques, both internal and external of DOE management of its major projects, and of the interfaces between the field and headquarters offices and the contractors. Sites subject to direction from multiple program offices have been a longstanding administrative problem that may get examined anew in the process.

**4. CONTRACT REFORM*****What Do I See:***

*In this arena, nothing appears so constant as change. The search for a more effective contract structure for performing the Department of Energy's work is likely to continue.*

**What Do I Think:**

There is a well know slang expression: "If it ain't broke, don't fix it!"

It is not obvious to me that the implications of discontinuity in contractors on the safety management of ongoing programs are well enough considered in decisions to rebid major operating and construction contracts. Nonetheless, the establishment of a well defined, site wide, Integrated Safety Management Program will facilitate such transition. Both DOE and any new contractor taking over site operations in the future should benefit from an existing, well defined set of conditions for safe operations of ongoing facilities and hazardous activities and requirements for planning and performing new ones.

It appears to me that the pool of contractors willing to undertake the hazardous tasks entailed in DOE's mission is shrinking. Further, an amalgam of contractors is much more the norm than the single major contractor of yesteryear. While I have seen a variety of contract arrangements work effectively, the more entities involved the stronger the lead management must be. In my view, however, the likelihood of success is much more dependent upon the capabilities of the leadership than the form of the contract. The Board has repeatedly emphasized to DOE the need to recruit and retain personnel of high technical caliber. This is equally the key to effective contractor support.

Just as I have shared some of my thoughts with you, I urge you to continue to share yours with one another. The sharing of ideas in a non-hostile environment offers the possibility that jointly you might create something better than any one of you might do alone.

Thank you for allowing me to share some of my thoughts with you.