

1 workforce. Our contractors are also concerned about
2 things like competing contracts, which may very
3 significantly distract them from the work at hand.

4 The age of our workforce has brought up
5 issues related to how you judge the ability of workers
6 to do a job. After you have assessed the hazards and
7 determined the appropriate controls, can our workforce
8 actually work within those controls? These are only
9 some of the day-to-day issues that must be addressed.
10 Failure to be mindful of these issues can also have
11 serious complications and consequences on a daily
12 basis.

13 I expect that the Board will come to
14 conclusions and have ideas for the Department on how to
15 better use both independent and line oversight as
16 methods for assuring and improving performance on the
17 part of the Department. I hope that your suggestions
18 include some ideas on the human factors issues that we
19 are currently facing today, and how oversight can help
20 us better focus in on those issues also. I look
21 forward to your conclusions at the end of your
22 hearings, and I thank you for this opportunity today.
23 I would be happy to take any questions that you have at
24 this time.

25 CHAIRMAN CONWAY: Dr. Eggenberger?

1 VICE CHAIRMAN EGGENBERGER: Mr. Chairman, I
2 will try to get this started, I guess. You made a
3 statement about change. In my view, change is very
4 important. That's the way we get things done. It's
5 also important to manage change, as you have stated.

6 The Board back in its formative years in
7 1989 came upon a change that had taken place in the
8 Department, namely in that orders, directives, and
9 whatever that was used to manage the Department was
10 changing very fast, and there was a lot of conflict and
11 unknowns that existed in the daily operations of the
12 Department because of this conflict.

13 One of the first things that the Board did
14 to attempt to help the Department stabilize this was to
15 examine the orders and directives that the Board
16 thought were important to safety. And basically, we
17 came up with a list of 20-some orders that we believed
18 were important to safety, and these were examined by
19 our staff, ourselves, also by the Department, and they
20 were improved.

21 Now, this was about 1990, and time went on,
22 and in the mid '90s, change had occurred, and new
23 people had come into the Department, and they believed
24 that these orders and the way that we do work need to
25 be changed again. So they were examined again. The

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1 Board found that somewhat upsetting in that we believed
2 that we had a fairly stable base at that time.
3 Nevertheless, the Board agreed that if you want to
4 examine these orders, let's do it rationally and
5 preserve the things that are necessary for our
6 operations to continue.

7 That then leads into my second point.
8 People. How did these orders and directives come
9 about? Well, we learned. We learned from the
10 beginning. The first generation of nuclear engineers
11 and scientists put together a way of operating and
12 conducting their business, and this resulted in the
13 order system that we now have. And I consider myself a
14 second generation "Nuke" [Nuclear Engineer]. We're now
15 on the third and fourth generations of people.

16 And as you indicated, you are worried about
17 the people problem in that a lot of people are getting
18 ready to retire and leave the Department, and hence,
19 this should probably create a flag. Well, yes, it
20 does. Also, with the orders and directives in which we
21 manage our nuclear business. So we're convinced that
22 we have to preserve these. There is a lot of work that
23 has been put into those since the early 1950s, late
24 '40s, and we do not want to lose those.

25 So again, I know you understand this, and I

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1 am sure that you will help with the other parts of the
2 Department that don't quite understand it so clearly.
3 And let me give you an example. The area of cleanup
4 and remediation is a new thing. It only began in the
5 '80s. So we have people that have not been involved in
6 the business from the beginnings, and we need to be
7 able to preserve the knowledge and the way of doing
8 business in their activities. So you can use other
9 examples also.

10 So we do have a way of accommodating new
11 operations where certain orders really aren't
12 necessary, directives aren't necessary, and that's the
13 S/RID [Standards/Requirements Identification Document]
14 process. It's a rational process, and it has worked
15 well, and some of the better contractors in the complex
16 have used it to do their work in a safe and cost
17 effective business.

18 So now that I have pontificated, could you
19 give me some of your thoughts on the preservation of
20 the nuclear safety orders and standards and directives
21 that we have?

22 MS. COOK: A couple of points. One is, I
23 agree there is a long history behind how these orders
24 have been developed, these directives, and it's a very
25 good history. And we have taken advantage of what we

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1 learned over the years, and we've come up with a good
2 step. However, I think that all of us have been at
3 this for quite some time. Even when we write documents
4 that provide interpretation orders, when EH does that,
5 we're still at times preaching to the choir.

6 I believe that there are things that we may
7 believe are implicit in those orders that someone new
8 coming in, if all of us disappeared, they wouldn't have
9 a clue what was intended. Therefore, I want to
10 continue to look to make sure that what is defined in
11 those orders and directives is clear and concise and
12 can be well understood by somebody new coming in.
13 Whether it is a new workforce, whether it's a new
14 contractor, I think there is still room for
15 clarification, and I think there is still areas where
16 we may be sending conflicting messages.

17 The other issue is, you know, how we set
18 those requirements in a contract. We sit down and we
19 define the List, the List B, which things should be
20 included in a contract, and those are negotiated at the
21 time of the contract. We have been in a habit in the
22 past of sort of throwing in the kitchen sink, so you do
23 end up with things in the list that may not be
24 appropriate, and then we have ended up in a situation
25 where the contracting officer and the contractor are

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1 playing around the fringes of that. They are not
2 holding a contractor fully accountable for all of the
3 things that are there.

4 That is an issue that has to be fixed,
5 also. As I said earlier, requirements should be set.
6 We should agree on that set, and then we should
7 absolutely hold people accountable to the set that we
8 agreed to.

9 VICE CHAIRMAN EGGENBERGER: The Board has
10 done that in that we have said that there are 20-some
11 orders of interest that one must be cognizant of and
12 use in conducting nuclear operations.

13 MS. COOK: Yes.

14 VICE CHAIRMAN EGGENBERGER: So we have done
15 a broad S/RID look at all of the orders, and that
16 doesn't mean that they cannot be improved. We agree
17 that they should constantly be improved for clarity,
18 but we don't want substance to be removed from them.
19 So I, generally, agree with your observation.

20 CHAIRMAN CONWAY: Okay. Dr. Matthews?

21 DR. MATTHEWS: Yes, I have a couple of
22 questions I would like to ask. You talked about
23 performance indicators.

24 MS. COOK: Yes.

25 DR. MATTHEWS: You talked about total

1 recordable case rates and loss work rates and near
2 misses, and I want to commend your office for improving
3 the current reporting system. I think it's clear and
4 more crisp. My interest is in nuclear safety. In
5 fact, you said we're not overlooking nuclear safety.
6 My thesis is that we don't want a criticality accident.

7 We don't want a dispersal of nuclear material. We
8 don't want an inadvertent nuclear explosion.

9 And so my question to you is, say you've
10 got a high consequence system failure, usually, only
11 predictable with hindsight, because they are rare
12 events, thank goodness. And so my question to you is
13 how is EH dealing with those accidents that we just
14 don't want to happen, because I have a hard time
15 connecting lost work time toward that.

16 MS. COOK: Yes.

17 DR. MATTHEWS: The big nuclear safety
18 issue. Could you discuss that a little bit?

19 MS. COOK: Yes. A couple of things along
20 those lines. As you know, the Office of Price-Anderson
21 Enforcement is in my office, and when they move forward
22 with the nuclear safety enforcement actions, it usually
23 is because there has been incidents, and that's pretty
24 serious, whether it is a series of contaminations or
25 some kind of an incident in a nuclear operation. We

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1 have got to come to a set of indicators that are
2 precursors to that and include that in our normal
3 reporting.

4 If that means a breakdown of processes,
5 that's why in these quarterly safety meetings we
6 discussed things like safety basis documents, and where
7 people are in getting their safety basis implies which
8 contractors we have had to regroup and tell them that
9 what they had submitted was not sufficient and it needs
10 to be redone, that sort of thing. That's why I asked
11 for assistance. We are not comfortable with setting
12 that precursor list of nuclear safety incidents, so
13 that we feel like we can measure performance in nuclear
14 safety in the way that will prevent us to getting even
15 to, of course, the more serious incidents, but even
16 into the Price-Anderson space. We want to get before
17 that.

18 DR. MATTHEWS: Okay. Well, there is some
19 who -- and I'm glad to hear you say that. But there
20 are some who say that some of the changes in oversight,
21 some of the changes in the directives that we've been
22 talking about, could be bringing us a little closer to
23 the potential, the probability, the likelihood of a
24 nuclear safety accident. If you read Captain Hicks'
25 testimony, that was one of his theses. Do you have any

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1 comments on how the reengineering and the contract
2 management changes that are ongoing could affect that?

3 MS. COOK: If, in fact, in our evaluation
4 with the Program Office of what those indicators are
5 for nuclear safety, we end up saying that we really do
6 have to monitor the processes that the contractors use,
7 I think that there will be a change in how the Program
8 Offices define their oversight and nuclear safety. I
9 think that the topic is not done.

10 I still believe, though, that we need to
11 hold our contractors accountable for doing their own
12 self-assessments and assuring they are getting the
13 outcomes that we expect of them and quit doing their
14 jobs for them and raise our expectations. But we are
15 going to have to figure out ways, so I think that there
16 is going to be room for negotiation here in some of the
17 reengineering efforts.

18 DR. MATTHEWS: Okay. Well, I look forward
19 to working with you, especially, on these indicators
20 for nuclear safety. I think it's a key issue. A
21 different question. I've heard you and a number of
22 other people testify about the importance of line
23 management responsibility for safety, a key ISM Guiding
24 Principle. Would you help me identify who line
25 management really is? And the way I could do it is

1 start with disassembly operations at Pantex from the
2 people who are doing the work, and trace that line
3 management responsibility through the contractor,
4 through the Site Office, through the Program Office,
5 up to the Secretary of Energy. Is that something that
6 could be done? Because, frankly, I'm never clear who
7 line management really is in that chain.

8 MS. COOK: When I look at all of the
9 reorganizations, whether it is sitting through the
10 Office of Science's reorganization or EM's or NNSA's or
11 anyone else's and I have sat through those discussions,
12 that's the question I ask. My definition of line
13 management is follow the money. You know, the person
14 that's paying is the person that is your line
15 organization.

16 Sometimes that gets confused. But I
17 believe ultimately the organization that is responsible
18 for accomplishing that mission is the line
19 organization, and that moves all the way up and through
20 the Secretary. I am a line management organization for
21 a facility that I operate. I have the money for the
22 Russell Facility in Idaho. I am not line management
23 for other operations. But that is a facility that I
24 personally am responsible for the operations, and I am
25 the one that funds them, and I am the one that assures

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1 that the work that is done there is of high quality and
2 that it is done safely in an environmentally
3 responsible way.

4 But I do believe that in some of the
5 reorganizations, those chain of line management is
6 still somewhat vague, and I get that same feedback from
7 field organizations. They are not quite sure how that
8 function is to work. And so I think that it is yet to
9 be seen if we settle on those roles and
10 responsibilities in that line management chain.

11 DR. MATTHEWS: Well, okay. Since you don't
12 know the answer either, because I have a different
13 definition than you just gave, I would like to request,
14 maybe later on, to see some real examples, not just
15 vague.

16 MS. COOK: Okay.

17 DR. MATTHEWS: From an operation from an EM
18 operation, from an NNSA operation, from the area where
19 the work hazard is being handled up to the Secretary of
20 Energy. I would be very interested in seeing that
21 defined clearly.

22 MS. COOK: Okay. And one of the examples I
23 can give you is, from my perspective, on how we want to
24 have certain things implemented. Like it's, you know,
25 the Suspect and Counterfeit Items Program, for

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1 instance, or some of the QA issues. What I do in EH
2 when there is something that we need implemented in the
3 complex is I send a letter to Under Secretary Card and
4 Ambassador Brooks, and we can show you then the chain
5 of events that happens from there and the chain backup.

6 And I think that that has helped us define
7 what line management is, and it has helped them define
8 what line management is. But I try whenever possible
9 things that I want implemented within the complex to go
10 to those two gentlemen and then watch how that goes
11 down through the complex and the information comes back
12 up. So we can give some examples for that.

13 DR. MATTHEWS: Thank you.

14 CHAIRMAN CONWAY: Okay. Bev, on December
15 8th, a proposed new Rule 851 [Worker Safety and Health]
16 was issued over your signature.

17 MS. COOK: Yes.

18 CHAIRMAN CONWAY: And as I read through the
19 proposed rule, practically every current order and
20 directive on safety that's been issued by the
21 Department of Energy would now become guidance. Am I
22 correct in my interpretation?

23 MS. COOK: I understand that you have
24 concerns about this.

25 CHAIRMAN CONWAY: Yes, very much so.

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1 MS. COOK: Yes. Let me step back to the
2 intent of that rule and what Congress asked us to do.
3 The intent was to take what we do now in contracting
4 space and have it enforceable under fines and penalties
5 also. What we do right now is every rule, not every
6 rule, but every directive is, in fact, negotiable in
7 the contract. They are not required. You've asked me
8 the question is it -- are the, for instance, the 440
9 [DOE Order 440.1A Worker Protection Management for DOE
10 and Contractor Employees] --

11 CHAIRMAN CONWAY: I understand.

12 MS. COOK: -- included in all the contracts
13 that are of interest to you, and my answer to you is
14 yes, it is. However, I will also tell you that they
15 aren't fully implemented in each of those contracts nor
16 are the contractors.

17 CHAIRMAN CONWAY: Okay. Could you tell me
18 on 440, which we worked very closely over the years to
19 develop with the Department of Energy, and with many of
20 the experienced people in your Department that you now
21 worry about losing and having new people, who are not
22 as experienced, and we've lost all these or are losing
23 the experienced personnel, who helped develop those
24 orders, and now they are no longer going to be orders,
25 but they are going to be guidance. And then the

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1 contractors, as I read your proposed rule, will be the
2 ones that will come up with what particular safety
3 requirements that they will accept, and then the less
4 experienced people, who now will be reviewing those,
5 will be making the determination whether it is adequate
6 or not.

7 Now, the concern you have of losing all
8 these experienced people, who helped develop all these
9 orders, and now you're going to let contractors water
10 them down and then less experienced people decide
11 whether that is satisfactory.

12 MS. COOK: Yes.

13 CHAIRMAN CONWAY: Now, let's take 440. You
14 are concerned that we are having to give too many
15 waivers on these orders. Can you tell me what waivers
16 you have been giving on 440 with those sites that we
17 have particular interest in? That the Board has
18 interest in.

19 MS. COOK: I'm sorry, I can't give you that
20 list right now, but I will go back and generate that
21 for you.

22 CHAIRMAN CONWAY: Well, your concern is
23 waivers.

24 MS. COOK: I am very concerned.

25 CHAIRMAN CONWAY: And I'm asking you what

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1 waivers in that 440 one that is now going to be a
2 guidance.

3 MS. COOK: Let me go back to the 440.

4 CHAIRMAN CONWAY: Yes.

5 MS. COOK: And the guidance issue. As I
6 said, what we're trying to do is get to what we do
7 right now in contracting. We sit down with the
8 contractor. The Program Offices sit down with the
9 contractor, and they decide which things are applicable
10 or not. And any one of those requirements could be out
11 at a contracting point.

12 CHAIRMAN CONWAY: You mean a Fire
13 Protection Order could be waived out?

14 MS. COOK: The Fire Protection Order is not
15 likely to be nor is it likely to be under this
16 rulemaking, either.

17 CHAIRMAN CONWAY: But it's a guidance now.
18 It will be a guidance. Not necessarily to be
19 enforced. Explosive safety -- is that another one that
20 you are giving waivers on?

21 MS. COOK: Once --

22 CHAIRMAN CONWAY: As I go down through 440,
23 each and every one of these that no longer is going to
24 be mandated.

25 MS. COOK: Because it's not -- it is not

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1 mandated now. It is not mandated now, unless it goes
2 into the contract.

3 CHAIRMAN CONWAY: And I asked you what one
4 of those orders that are not in a contract.

5 MS. COOK: If it goes into the --

6 CHAIRMAN CONWAY: But now you are going to
7 let the contractors come in and decide which ones they
8 want, rather than the DOE?

9 MS. COOK: DOE will decide which ones are
10 appropriate. DOE will approve it. I would like to
11 cover this in more detail in our other briefing. What
12 we are looking for is something very similar to, for
13 instance, the NRC's [Nuclear Regulatory Commission]
14 Standard Review Plan. When the NRC licenses a reactor,
15 they have a list of things that are acceptable.

16 CHAIRMAN CONWAY: Or essential. Actually,
17 are essential.

18 MS. COOK: And that is what we were
19 intending to get to on this. A listing of those things
20 that are essential that are generally acceptable, and
21 maybe the way that we have stated it is not going to
22 preserve what you're looking for and what, in fact, I
23 am looking for.

24 CHAIRMAN CONWAY: Okay.

25 MS. COOK: And so we very much --

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1 CHAIRMAN CONWAY: And we're talking -- is
2 there going to be guidance documents now rather than
3 "orders?" Let me read something. I'm going to read
4 from the Rule. "Proposed 851.8 would broadly define
5 the term guidance document to include any document that
6 sets forth information relating to implementing or
7 otherwise complying with a requirement set forth in the
8 proposed regulations, and that DOE has not adopted as a
9 legally binding requirement through notice and comment
10 rulemaking under the Administrative Procedure Act."

11 MS. COOK: Yes.

12 CHAIRMAN CONWAY: Okay. Now, the Board has
13 made in the past recommendations to the Department of
14 Energy, to the Secretary, and they have been accepted
15 by the Secretary. Now, and they go out as
16 implementations in an Implementation Plan. Now, if I
17 read this, they are not under the Administrative
18 Procedures Act. They did not go through rule making.
19 So all of that now is not legally required?

20 MS. COOK: What we are referring to there
21 is those things that are referred to as -- under the
22 Administrative Procedures Act -- are those things that
23 are rules now. Those things are required by law and
24 they will continue to be required by law.

25 CHAIRMAN CONWAY: Well, those have already

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1 gone through rulemaking?

2 MS. COOK: That's right.

3 CHAIRMAN CONWAY: But this goes back to:
4 that's not what this says. This says that nothing will
5 be legally binding unless it has gone through
6 rulemaking. The exception is the Beryllium Order.

7 MS. COOK: Which has gone through -- which
8 we are going to include verbatim.

9 CHAIRMAN CONWAY: Yes.

10 MS. COOK: Those things are not legally
11 binding now.

12 CHAIRMAN CONWAY: But you're not -- no.

13 MS. COOK: DOE Orders are not legally
14 binding now. They are contractually binding.

15 CHAIRMAN CONWAY: Are the recommendations
16 that this Committee made - this Board made - and the
17 Secretary accepted in setting specific standards that
18 were to be committed to, and which we understood were
19 committed to, but are no longer going to be binding
20 unless they go through the Administrative Procedure
21 [Act] under rulemaking? That's what this -- you have
22 to understand there is a history in this.

23 MS. COOK: I understand. I do understand
24 that there is a history in this. What we are trying to
25 get to is to take those things that are now orders,

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1 that are not legally binding, put them in a plan that
2 then is legally binding.

3 CHAIRMAN CONWAY: By rulemaking?

4 MS. COOK: By putting them in the process
5 that we are talking about in this order, in this
6 rulemaking, by putting them into the plan or that
7 contract.

8 CHAIRMAN CONWAY: That's not what this is.
9 This is not what it says.

10 MS. COOK: So it is now legally binding.
11 When it gets put in -- once the set of requirements is
12 put in the contractor's plan, and it is agreed to by
13 DOE and the contractor, just like we negotiate in the
14 contract, we negotiate on this plan. We decide this is
15 the setting.

16 CHAIRMAN CONWAY: That's not what this
17 says.

18 MS. COOK: Then, in fact, that is legally
19 required.

20 CHAIRMAN CONWAY: That's not what this
21 says. It says --

22 MS. COOK: Then we need to clarify the
23 statements.

24 CHAIRMAN CONWAY: You have to -- you better
25 get your lawyers to go back over that language in

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1 there.

2 MS. COOK: Okay. We will do that.

3 CHAIRMAN CONWAY: And you'll understand,
4 back when this Committee first started to make
5 Recommendations to the Secretary, 90-2 [DOE High
6 Priority Defense Nuclear Facilities: Design,
7 Construction, Operation and Decommissioning Standards],
8 specifically back in 1990, there was an effort put by
9 some contractor to -- that our recommendations and the
10 Secretary's adopting of them would not be binding
11 unless it went through rulemaking.

12 MS. COOK: Yes.

13 CHAIRMAN CONWAY: The DOE rejected that,
14 and we rejected that. Now, as I read this, you are
15 back in the same place again, where they are going to
16 require - legally binding - they'll have to go through
17 rulemaking, which is a very laborious, slow moving
18 process. And it would seem to me the wording you have
19 here would make all of the Recommendations made to date
20 and decisions by the Secretary to implement the
21 specific Recommendations no longer going to be binding
22 unless they go back through rulemaking. That's what
23 I'm reading here.

24 MS. COOK: Okay. Well, we need to have a
25 much longer conversation on this, but that's -- what we

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1 are trying to do is put those things that have not gone
2 through rulemaking into their plan, get it agreed to
3 and then it does become legally binding. So you don't
4 have to go through rulemaking on every one of those.

5 CHAIRMAN CONWAY: You've got that today.
6 You have that today. You have that today.

7 MS. COOK: 440 is not legally binding.

8 CHAIRMAN CONWAY: 440. It certainly is.
9 If you get it into your contract and accept it.

10 MS. COOK: It is.

11 CHAIRMAN CONWAY: And I --

12 MS. COOK: Contracting space is different
13 than legal.

14 CHAIRMAN CONWAY: The same thing applies
15 today then. What you are trying to do is minimize the
16 particular requirements that can be contracted to be
17 fined on. That's what you're attempting to do through
18 this rulemaking.

19 MS. COOK: That's not what I'm attempting
20 to do.

21 CHAIRMAN CONWAY: That's what is happening
22 here. You're trying to -- say the 440 Rule, 440 Order,
23 is specifically pointed out to be only a guidance
24 document now, and that your staff has even told our
25 staff that they intend to get rid of it completely.

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1 And I think you are watering it down significantly, and
2 it's not in the best interest of safety.

3 MS. COOK: Well, as you know, we are
4 continuing discussions with your staff, and we're also
5 looking at all the publications that we have received.
6 We are in rulemaking on this and we're certainly open
7 to discussions.

8 CHAIRMAN CONWAY: And we've located --

9 MS. COOK: And we will continue these
10 discussions.

11 CHAIRMAN CONWAY: Well, you're open to
12 discussions. But I'm telling you, I'm going to take a
13 strong position against the way the language is
14 currently written.

15 MS. COOK: Okay.

16 CHAIRMAN CONWAY: Because I think you are
17 very seriously watering it down. You talk about your
18 job being the leader leading in this area. You are
19 turning the leadership over to the contractors, that's
20 what you're doing in this proposed rule.

21 MS. COOK: I appreciate your opinions and I
22 appreciate your input on this.

23 CHAIRMAN CONWAY: Okay.

24 MS. COOK: Thank you.

25 CHAIRMAN CONWAY: Vice Chairman

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1 Eggenberger?

2 VICE CHAIRMAN EGGENBERGER: Yes. You
3 talked about the Contractor Self-Assessment Program.
4 My view is that this is nothing new. They should have
5 been doing this all the time.

6 MS. COOK: I agree.

7 VICE CHAIRMAN EGGENBERGER: I don't believe
8 it needs to be talked about, other than to make sure
9 that they are doing it. I mean, that's the standard
10 practice. I guess as all this weaves together, and we
11 talk about oversight, DOE is going to oversee the self-
12 assessments in that they will evaluate those, I would
13 hope. But on the other hand, I would assume that DOE
14 is going to oversee what the contractor is doing also
15 and with some type of organization that will eventually
16 feedback up to the Assistant Secretary of interest and
17 so on.

18 Can you give me some thoughts on what you
19 believe is the appropriate oversight model for EM and
20 NNSA, from your perspective?

21 MS. COOK: Sure. Let me just say a couple
22 of things. I agree that Self-Assessment Programs
23 should have been ongoing all the time. We are really
24 in the position of correcting some poor habits. Okay.
25 Let me just put it that way. What do I see as the

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1 right model for oversight? I think it best is
2 described as "Trust, but verify." Expecting your
3 contractors to do the things to assure that the work
4 they are doing is being done safely in an
5 environmentally responsible way. But making sure that
6 we then verify that that is happening.

7 I believe it can be an evolutionary process
8 with any contractor. You want to get to the point
9 where you know that their performance is not just
10 because they are lucky that they are doing the right
11 things to make sure that the performance is good. And
12 as you move forward with the contractor and you develop
13 that competence in what they are doing, you can step
14 back from maybe as much day-to-day oversight of what
15 they are doing.

16 But I think that at first, even with the
17 best contractor, you need to make sure that you are
18 verifying that what they are doing is getting the
19 performance that you want, and they know why it is
20 happening. I often get contractors coming into my
21 office, especially ones who have had problems in the
22 past, and their performance has been falling down, with
23 new statistics saying "See, aren't we great, aren't we
24 great," pushing me very, very hard to take a stand that
25 their performance has improved.

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1 My question to them is always, "Why did it
2 change? How do you know it happened?" I have been
3 torturing a few of our contractors with that. If they
4 can't tell me what it is they have done to improve
5 their performance and what it is that they are doing to
6 assure that it is happening, then as far as I'm
7 concerned, they are just gamed numbers in a fixed
8 report.

9 So it gets back to the "trust, but verify,"
10 absolutely verify, that you know that the performance
11 that is occurring is happening for a very specific
12 reason. Each of the Program Offices have different
13 issues, a different workforce, different kinds of work
14 that they do. What happens in an EM cleanup site with
15 contractors that are, you know, laborers running heavy
16 equipment is a much different oversight model, than
17 that you would have for Office of Science Laboratories,
18 than you would have for a nuclear operation.

19 There are different ways and different
20 drivers for those different workforces, so I really
21 believe that each contract office has to figure out
22 what is the model that best fits the kind of work they
23 do and the work fits they have. But we have to get
24 away from the contractor depending on the Department of
25 Energy to find their issues, to address their issues,

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1 and "If you don't get caught, it doesn't count," kind of
2 attitude. We've got to get away from that.

3 VICE CHAIRMAN EGGENBERGER: Could you be
4 more specific in regards to site oversight versus
5 Headquarters oversight and Departmental oversight?

6 MS. COOK: Site oversight. Let's see, I
7 don't know whether to start from the top down or the
8 bottom up. Let's start from the bottom. Site
9 oversight. I believe that having been in each of those
10 situations, at a site oversight level, it is knowing in
11 a day-to-day way that the operations that are being
12 conducted by your contractor are being done in a
13 rigorous manner, and again it depends on what kind of
14 work that you're doing and how much that changes.

15 Understanding what they are accountable for
16 and holding them accountable for that. Lots of issues
17 associated with, for instance, flow down of
18 requirements to subcontractors and daily workers that
19 come in, and especially in a D&D [Deactivation and
20 Decommissioning] environment is a big issue. The
21 oversight that I believe should happen at a Field
22 Office level is the kind of oversight that results in
23 knowing what are the processes that your contractor has
24 in place to assure safe work, to know that those
25 processes are not something they just put on the shelf,

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1 that they are actively working those processes,
2 measuring the performance and knowing what is causing
3 that performance or what is undermining that
4 performance, and then having people in the facilities,
5 like the Facility Reps that watch how day-to-day
6 operations happen in your more difficult situations,
7 especially those that have high consequences and also
8 those that have a variety of change, change going on
9 every day. It's especially of concern to me.

10 The Headquarters Program Office, I believe,
11 their oversight role is to assure that the Field
12 Offices are accomplishing those goals, making sure that
13 they understand what the contractor is doing. And also
14 making sure that the resources are identified so that
15 Field Office can do what they need to do. The Program
16 Offices are acutely aware of that at Headquarters.
17 They are trying to do both at bottoms up and tops down,
18 sort of a definition of what should be at the Field
19 Office. What kind of expertise should be there? What
20 kind of information should be generated? And they are
21 expecting the Field Offices to identify also what they
22 need and make sure that the appropriate things are in
23 place?

24 From an independent oversight level, I very
25 much do count on Office of Independent Oversight [OA]

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1 and all of the other organizations including the
2 Defense Board to make that independent look to see if
3 the system we put in place is working. And as I said
4 earlier, when you find something that we didn't find,
5 that we didn't even know, or we knew and didn't do
6 anything about, that is a significant statement on the
7 part of the Department that our processes are not
8 working, and we are not doing the right kind of
9 oversight at the other levels to make sure that we are
10 catching and fixing those things before someone else
11 has to come in and tell us what it is we're not doing.

12 It's hard to describe a model that is
13 generic to all of our operations. It is so different
14 operation to operation.

15 VICE CHAIRMAN EGGENBERGER: I would like to
16 correct something that I said previously. It isn't 20-
17 some. It's 44 orders and guides that have our interest
18 in the nuclear safety issue.

19 MS. COOK: Yes.

20 CHAIRMAN CONWAY: Dr. Matthews?

21 DR. MATTHEWS: Yes, I want to just briefly
22 follow-up on the oversight conversation that just went
23 on. One of the apparent goals of the new oversight
24 policy is to take out redundancy, and we have heard
25 that in the name of efficiency, where I can understand

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1 it would be efficient. The question I have is: how
2 does taking out redundancy affect safety? Especially,
3 in fact, you led right into my question. When the Board
4 finds things that DOE hasn't themselves seen, which
5 suggests to me that there isn't enough oversight
6 internally at the Department of Energy, because that
7 shouldn't happen.

8 So could you sort of balance those two
9 conflicting things for me?

10 MS. COOK: Yes. First off, I will say that
11 I believe some level of redundancy is important and
12 critical, just as an overall statement. I think it is
13 very important in our analysis of what is being found
14 by oversight organizations to determine what the root
15 cause is of the issue that is addressed. I have yet to
16 find an issue identified by any oversight organization
17 that wasn't known, at some level, by the line
18 organization at some point.

19 However, why in the world they didn't do
20 anything about it is always a question. Therefore, I'm
21 not sure that it is an issue of redundancy in many of
22 those cases so much as inappropriately defining what
23 the requirements are of the Department and holding
24 people accountable for fixing the issues as they occur,
25 rather than waiting to get caught. So I think there is

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1 a lot of ways to deal with that.

2 So although I believe redundancy is
3 important, I don't think that's the thing that is going
4 to fix some of these issues. I think it is some of the
5 other accountability things that need to be fixed.

6 DR. MATTHEWS: Okay.

7 CHAIRMAN CONWAY: Thank you. Bev, when you
8 responded to that, you have the rule out for comment
9 from the public, and you will take our comments into
10 consideration at that time with them. The comments
11 from the Board and my comments personally are not part
12 of the --

13 MS. COOK: I understand.

14 CHAIRMAN CONWAY: -- Administrative
15 Procedure Act.

16 MS. COOK: I understand.

17 CHAIRMAN CONWAY: We're required by law to
18 review these posed changed in our orders.

19 MS. COOK: I understand that.

20 CHAIRMAN CONWAY: And orders, regulations,
21 and requirements, we are required by law to do that.

22 MS. COOK: Yes.

23 CHAIRMAN CONWAY: So our comments to the
24 DOE, to you, and the others at the DOE is in
25 conjunction or connection with the law that requires us

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1 to do it, and that's outside of the Administrative
2 Procedure Act.

3 MS. COOK: Yes, yes.

4 CHAIRMAN CONWAY: So I am going to put it
5 in the record, at this point, our letter of January
6 29th, which, in effect, summarized the long discussions
7 our staff had as these proposed rules were being
8 prepared by your people. So by this, I want to make
9 that clear for the public.

10 MS. COOK: Yes.

11 CHAIRMAN CONWAY: That we're making our
12 comments in connection with the requirements of the
13 law, not the Administrative Procedures Act, in which
14 you were waiting for the public to comment on.

15 MS. COOK: Yes, and I may not have stated
16 that clearly. What I was trying to express is that we
17 very much want the Defense Board to be involved with
18 our resolution of public comments and how we --

19 CHAIRMAN CONWAY: Well, we try to do that.
20 We try to do that. In the past we have been very
21 successful under this section of the law. We've been
22 very successful. As the various other -- since, what
23 90-2, since 1990, we've been very successful in doing
24 that.

25 MS. COOK: Yes.

1 CHAIRMAN CONWAY: In which case, had we
2 been successful in working with you this time, the
3 Board might have been in the position to come out and
4 support what you're trying to do. But our comments
5 under the law as we tried to get them to you were not
6 picked up, were ignored, completely ignored. Now, you
7 are out in the public, and we find ourselves, the Board
8 finds our letter to not be supportive of you.

9 MS. COOK: I understand.

10 CHAIRMAN CONWAY: Okay. Do you have any?

11 MR. FORTENBERRY: Yes. Bev, I would like a
12 little help on understanding one item here. You
13 described the Secretary of Energy's safety goals, and
14 you described your role as the corporate safety
15 officer. And in further defining those roles, I got
16 the sense you were speaking in terms of arriving at
17 measurable goals that could then be implemented.

18 Can you explain or give me some opinion of
19 how this idea is reconciled with the NNSA concept of
20 the Site Office Manager being the risk acceptor? Do
21 you see a conflict with that?

22 MS. COOK: No, I don't see a conflict,
23 because, I think, there is a hierarchy of goals. I
24 think that the Secretary's Statement of overall goals
25 very appropriate for the entire Department and then as

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1 we see through the Program Offices and ESE [Energy,
2 Science and Environment], where the Office of Science
3 has a different set of goals than EM has. NNSA is also
4 moving along those lines. When they say that the Site
5 Office is the risk taker, that doesn't mean that they
6 are able to set aside the overall goals of the
7 Department and take -- and make decisions that are
8 outside of that overall goal. I think that they are
9 very much aware of the overall goals of the Department
10 and then have to decide on how best to do that at a
11 Field Office level.

12 MR. FORTENBERRY: There was another
13 statement that you made in your testimony that line
14 management is responsible for implementing the rules
15 and requirements in a manner such that the safety goals
16 are met.

17 MS. COOK: Yes.

18 MR. FORTENBERRY: And that struck me when I
19 heard that, because I think of the requirements and
20 rules issued by the Department as being issued, driven
21 from the safety goals, and the implication is that
22 those requirements and rules, that they don't
23 necessarily speak to the safety goals. And so there is
24 a lot of flexibility in how you implement those such
25 that the safety goals, which, I think, you pointed out

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1 are not very objective, at this point, can be met.

2 It kind of is the same issue as risk
3 acceptance and determining how far do you want to go?
4 When do you think the safety goal has been met? Does
5 that give you the same sort of concern?

6 MS. COOK: Yes, let me -- what I was trying
7 to allude to there is, in fact, the contract is between
8 the contracting officer at the Field Office level and
9 the contractor. And that contractor is where you
10 decide those DOE orders and those things that are not
11 rules that are applicable to that contract to meet
12 those overall goals, and so that is what I was alluding
13 to at an implementational level, at a contract level.
14 They need to make sure that the things that are in that
15 contract meet those overall goals.

16 MR. FORTENBERRY: Yes, this personally
17 becomes quite confusing. I know the Chairman raised
18 the issue of requirements, and we had the discussion
19 about it being in the contract or not being in the
20 contract. The contract is between the Field Office
21 Manager and the contractor, so they decide what is in
22 the contract and what isn't, and so what is the
23 requirement, and what is not? There is also a
24 discussion in your testimony about EH as the Corporate
25 Safety Officer ensuring what is or isn't in the

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1 contract, ensuring that requirements are -- you know,
2 the appropriate requirements are in there.

3 It gets pretty confusing as to who is
4 really responsible for defining the requirements. It
5 seems like it would be a lot simpler if the
6 requirements were not so negotiable at all levels. I
7 do get the impression, and just from listening, that it
8 is quite confusing, not very straightforward in terms
9 of who is really making the call on it. I really was
10 surprised at the statement you made that there was some
11 consideration of EH being the exemption authority as
12 opposed to the Program Secretarial Office. That's
13 pretty significant.

14 MS. COOK: It is.

15 MR. FORTENBERRY: And it speaks pretty
16 directly to some of the discussions we heard in
17 previous hearings from the Columbia Accident
18 Investigation Board, as well as NR [Naval Reactors] and
19 the way they operate. They have all of the exemption
20 authority resting in Headquarters. Can you give me a
21 little more discussion on this idea that EH would be
22 the exemption authority?

23 MS. COOK: I don't have all the information
24 on that, but I believe that it is not just the safety
25 orders, but other orders in addition where there is

1 consideration of changing the exemption authority from
2 the PSO to the Office of Primary Interest. And so that
3 is under discussion within the Department right now and
4 under review within the Department right now. And I
5 can't tell you what the review cycle is on that right
6 now, but the EH staff is actively involved in that
7 discussion.

8 Right now, exemptions to safety orders,
9 when a Program Office -- how it's working right now for
10 us, when a Program Office is considering an exemption,
11 they contact EH and ask us for our opinion. Okay. I
12 was getting copies of exemption approvals from Program
13 Offices, and I would get a copy of them for specific
14 issues, whether it was exemption for use, for something
15 that someone was approving, that kind of thing.

16 And I started asking my staff, you know,
17 are we okay with this? And then they started giving me
18 that feedback loop of yes, here is where we asked, and
19 here is how we played in that decision, but it is not a
20 formal process. So I am actually very interested in
21 maybe considering how that might change and whether if
22 it is not a complete change to the Office of Primary
23 Interest in making the exemptions, that at least
24 somehow we formalized the concurrence process of the
25 Office of Primary Interest.

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1 Right now, it says if you don't express
2 your exemption or your opinion on this within 30 days,
3 it's a done deal.

4 MR. FORTENBERRY: Speak now or --

5 MS. COOK: Yes.

6 MR. FORTENBERRY: -- forever --

7 MS. COOK: That's it. Exactly. I'm not
8 sure if that's formal or not.

9 MR. FORTENBERRY: And as I understand the
10 previous discussion, this would essentially be a
11 contract. This is a contract negotiation point, these
12 exemptions, and so EH would be, in a sense, involved
13 more directly in contract terms.

14 MS. COOK: And at this point that we have
15 some concurrence level within these contracts, but this
16 actually is speaking two things: after the contracts
17 are in place and then exemptions are asked for.

18 MR. FORTENBERRY: Yes, okay. And a couple
19 more, John, if you don't mind. I did -- there was some
20 discussion about the EH role in evaluating performance
21 and crosscutting trends.

22 MS. COOK: Yes.

23 MR. FORTENBERRY: And listing all the
24 Program Offices that you are involved in doing that.
25 And, of course, the exception is NNSA. Can you help me

1 a little bit with that relationship as to why NNSA
2 stands alone or apart from your ability to provide
3 crosscutting evaluation and identifying concerns?

4 MS. COOK: It does not stand apart.
5 However, we have a formal relationship with the Under
6 Secretary for ESE, with Under Secretary Card, in how we
7 go about doing that and how we provide information to
8 him and back to his Program Offices. We also do that
9 crosscutting review of NNSA's performance, and we
10 document that. We are formalizing those relationships
11 with Ambassador Brooks, and he is very interested in
12 that information and wants to become more familiar with
13 it and get more of that.

14 We also provide information between the two
15 sides of DOE. They both, Mr. Card and Ambassador
16 Brooks, are very interested in what the other one has
17 got going, too. And we are trying to more facilitate
18 lessons learned between those two organizations. I'll
19 use an example that we have got going right now, and
20 that is the incident that happened at NRF [Naval
21 Reactors Facility] out in Idaho with the container in
22 the storage pool that exploded.

23 MR. FORTENBERRY: Yes.

24 MS. COOK: Okay. You had a container that
25 had been stored much longer than it had been

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1 anticipated. It leaked. Degradation of seals. It
2 leaked. It resealed itself. Built up hydrogen, and it
3 exploded. When we started looking into that, we
4 suggested to NNSA that that was an important lesson
5 learned for the entire complex, not just on storage
6 containers or even just degradation of organic seals,
7 which are both important issues, and we ought to
8 address that around the complex.

9 But also the issue of the performance of
10 materials long beyond the life they were originally
11 intended for, and so we are pursuing the lessons
12 learned on that to distribute across the complex. So
13 things that are happening in the NNSA world are very
14 important to the ESE, and we're facilitating that, too.

15 MR. FORTENBERRY: And EH's role in regards
16 to NNSA, at this point, is sort of a negotiated role?
17 It's one that you don't have. For example, I sense
18 from your testimony that you actually require that
19 issues be addressed. You point out deficiencies and
20 performance, etcetera. And that's not the case with
21 NNSA. It's more of communication.

22 MS. COOK: Some of it is communication, but
23 when there are systems to be implemented complex- wide,
24 for instance, suspect and counterfeit items, we send
25 letters both to NNSA and to ESE, that say, "This is the

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1 system that is being implemented. Please, implement
2 this within your organization."

3 MR. FORTENBERRY: One final point. There
4 was a discussion about a desire to minimize separate
5 budget efforts between, presumably, NNSA and EM: this
6 is probably the frequent example, because that hasn't
7 worked very well. We can do -- I think that's the
8 issues or actions that we generally refer to as
9 crosscutting activities. And clearly, what we see
10 currently is that those separations, those separate
11 budget issues, are alive and well, and we see them in
12 Software Quality Assurance actions and in the response
13 to the Board's Administrative Control Recommendation
14 Quality Assurance Improvement. We see very distinct
15 activities between the two as opposed to a combined
16 crosscutting Department effort. Do I take in your
17 testimony you to say that you are trying to address
18 that and eliminate those differences, such that it is a
19 common effort?

20 MS. COOK: We are trying to coordinate
21 those differences to make sure that, you know, things
22 can be done differently for different applications, but
23 we need to make sure that we get to the right outcomes
24 at the end of the day.

25 MR. FORTENBERRY: Yes.

1 MS. COOK: And we are working very hard to
2 get to that, but I realize we are not there yet.

3 MR. FORTENBERRY: And as corporate safety
4 officer, you are responsible for these crosscutting
5 issues?

6 MS. COOK: Yes, yes. But I will say where
7 we're seeing specifically funding issues is, for
8 instance, in both '04 and also in the '05 budget
9 submittal, we have increased funding within the Office
10 of EH for Quality Assurance, for instance, and Software
11 QA, those sorts of things. Things that in the past
12 have been funded by the Separate Program Offices, and
13 people like the QA working group went around with their
14 hat out trying to make sure they got enough money for
15 that. We have located that within the Office of EH and
16 adjusted funding accordingly.

17 MR. FORTENBERRY: Okay. Thanks.

18 CHAIRMAN CONWAY: Bev, one of the lessons
19 learned you didn't mention from the Columbia Accident
20 was the loss of technical competence within the feds.

21 MS. COOK: Yes.

22 CHAIRMAN CONWAY: Federal force. And then
23 the turning over to contractors more of the
24 responsibilities than the feds turning their
25 responsibilities over to the contractor. Now, that is

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1 a lesson learned that I would suggest DOE keep in mind
2 as they move ahead with this rulemaking.

3 MS. COOK: I understand.

4 CHAIRMAN CONWAY: Dr. Eggenberger?

5 VICE CHAIRMAN EGGENBERGER: That's all I
6 have.

7 CHAIRMAN CONWAY: Dr. Matthews?

8 DR. MATTHEWS: One last question or
9 comment. We sent over to you a letter, a data request,
10 which you had reviewed, and it was really to give you
11 the opportunity to make sure the record was complete on
12 the set of public hearings on DOE and NNSA's current
13 oversight and contract management models. And I just
14 wanted to give you one last opportunity to say, "Yes,
15 you've got the full story," or are there other things
16 that we should be hearing?

17 MS. COOK: I think that there is several
18 things. We discussed that before the meeting started
19 today with some of the staff. There are some things
20 that we would like to submit into that record, and I
21 know we have a few days to do that. For instance, the
22 subject that we discussed about line management and the
23 examples that we have on that. I would like to make
24 sure that that gets into the record, so you see some
25 examples of that on how EH's direction flows down and

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1 back up through the line organization, so we will
2 submit that.

3 DR. MATTHEWS: Okay.

4 CHAIRMAN CONWAY: There may be some more
5 questions coming to you. We'll keep the record open
6 until March 9th.

7 MS. COOK: Okay.

8 CHAIRMAN CONWAY: So the record will be
9 maintained and there may be some additional questions
10 we will supply to you. And I thank you for your time
11 here today. Is there anyone in the audience that would
12 like to speak? If not then, we will recess subject to
13 the call of the Chair. Thank you all.

14 MS. COOK: Thank you.

15 (Whereupon, the Public Meeting was
16 concluded at 10:44 a.m.)

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