

TESTIMONY

**Kyle E. McSlarrow,
Deputy Secretary of Energy**

**Defense Nuclear Facilities Safety Board
Public hearing
October 21, 2003**

Thank you, Mr. Chairman, and members of the Board for providing me the opportunity to address you today. In my role as the Deputy Secretary of Energy, I serve as the Department's Chief Operating Officer and have responsibility for providing direction to all DOE organizations, including NNSA. The subject of today's hearing – safety oversight – is a critical component of the Department's management system.

The Secretary and I take our responsibility to ensure the Department's missions are performed safely very seriously, and the Secretary has made this clear from his first year in office. For example, the Secretary stated, in remarks at the 2001 Executive Safety Conference, "I want to speak about safety because nothing is more important. If we do this well, everything else will fall into place. If we fail, nothing else we do can make up for that failure." All of our Department leaders are committed to conducting business in a manner that protects workers and public health and safety and the environment. We honor this commitment by understanding our operations and the associated hazards and establishing appropriate systems for controlling the hazards and managing the inherent risks. We strive to cultivate a questioning attitude at every level of the organization. We are committed to continuous improvement of our operations. Our goal is to establish and maintain a strong and enduring safety culture, with safety as an integral part of all of our work practices.

I personally appreciate having had the opportunity to work with the Board and I strongly believe the Board plays an important role in providing an independent and critical perspective on the Department's defense nuclear facility activities. External scrutiny is necessary and helps us to improve. We believe the Department is on a good path, but one

that will require continued attention by the Department's senior leadership. We also believe that continued close scrutiny by the Board will benefit the Department and help us to stay on course.

DOE's Safety Management System

An effective safety management system includes senior leadership commitment and focus on safety, a comprehensive set of safety requirements, a technically skilled and qualified federal workforce, and effective contracts that communicate clear expectations and allows us to hold contractors accountable. Oversight is conducted to ensure all parts of this safety management system works as intended.

Integrated Safety Management (ISM) remains the foundation of the Department's safety strategy. In addition to safety hazards, safeguard, security, and environmental issues are considered when planning an activity. Over the past five years, ISM has proven to be an effective system for improving safety performance by ensuring that safety is an integral part of all work activities from the initial planning stages through project closure.

As a key part of ISM, the Department requires that contractors establish feedback and improvement mechanisms to verify that safety requirements are being implemented and ensure continuous improvement. However, we cannot and do not rely solely on contractor assurance programs. ISM also requires DOE line management engagement and oversight to ensure that contractor programs are effectively implementing DOE safety expectations. We believe that ISM has improved safety performance by ensuring that line and facility managers are directly involved in and responsible and accountable for safety management. The benefits of this approach are seen through the review of various performance metrics, such as a downward trend in injury and illness rates at our facilities. We plan to continue to use the ISM framework to further enhance our safety systems.

We recognize there is more to do. While ISM continues to improve and mature, we nevertheless recognize that there are weaknesses in ISM implementation that need

continued attention and improvement. For example, we do not always identify all hazards adequately, and the feedback and improvement steps need significant work. We believe that a fully-developed ISM system will address these and other problems, however, and are committed to the ISM system as an enduring part of the Department's safety culture.

DOE Oversight

Effective oversight is a required element of a rigorous safety management system. Oversight is the method by which the Department is assured that its policies are implemented. Appropriate oversight must be performed at every level of the organization.

The missions and goals of the Department are set by the Secretary. The environment, safety and health framework under which we conduct those missions and meet those goals are articulated in DOE orders, rules, manual, and guides. We have rigorous processes in place for managing changes to these requirements. The Department has continued its multiyear focus on improving its requirements by removing overly prescriptive, redundant and conflicting requirements where possible. However, the primary principle in our efforts to streamline requirements has been and remains that DOE requirements must ensure adequate safety.

The Under Secretaries implement our missions through their Program Offices and contracts with private companies. Appropriate contract clauses ensure that contractors perform missions in a manner that is consistent with DOE safety expectations and requirements. We use performance based contracts to encourage innovation, to ensure progress towards goals and to promote cost effective approaches. We must strive to clearly define safety requirements as well as mission goals in our contracts, so that the contractors are held accountable and rewarded for accomplishing work safely, and not rewarded if safety is degraded. ESE and NNSA site offices provide direction to the contractors and monitor safety performance on a day-to-day basis.

As examples, safety performance is an entrance requirement for contractors to do work for EM. However, when safety performance expectations are not met, EM has used the contract to hold the contractor accountable through the use of fee with holdings and fines. In 2003, EM exercised this clause at a number of its sites including:

- In July 2003, at the Fernald Site, the contractor's fee was provisionally reduced by **\$100,000** for unacceptable work controls in decommissioning work; this will be converted to a final fee reduction if Fernald does not produce improvements in this work.
- In August 2003, at the Savannah River Site, the contractor was penalized **\$750,000** for poor radiological control practices where three employees received doses of 700, 400, and 200 mRem and records were falsified after work on removing material in a glovebox.
- Again in August 2003, at the Idaho Site, the contractor's fee was reduced by **\$200,000** for failing to meet requirements and expectations of the Safety Management System in the areas of industrial safety and quality control
- Within the past six months, the Office of Price-Anderson Enforcement has proposed to NNSA five enforcement actions. The actions carried significant associated civil penalties.

DOE took these actions long before performance reached a level where workers were seriously injured. Ultimately, each of the DOE program organizations are accountable for determining that their directions and policies are implemented correctly by performing effective oversight. The Secretary and I have insisted that the contractor responsibilities for safety are clearly defined and that we aggressively hold them accountable for their performance.

The DOE line organizations have recently reviewed and restructured their organizations, or are in the process of doing so. The overall Department goal is to clearly define roles and responsibilities, promote efficiency so that finite resources are used most effectively, improve our oversight efforts, and make sure that the appropriate, technically qualified staff are available at all levels. Both Under Secretaries will speak to the actions they are taking for their areas of responsibility. I expect an effective and efficient organization that clearly communicates the Departments safety requirements and policies, verifies these policies are being followed and validates appropriate outcomes are achieved as a result of these policies. This verification and validation is obtained through proper oversight.

In addition, the Office of Independent Oversight and Performance Assurance (OA) provides an independent verification of the effectiveness of line management's implementation of safety requirements. OA evaluates the effectiveness of the oversight programs of the contractors, the field element, and the Program Offices. OA also provides critical information on the effectiveness of the policies in meeting our safety goals. This feedback is important to allow DOE to continuously improve our safety performance, our oversight, and our safety requirements.

We have recognized the need for a comprehensive DOE oversight policy. As the Board is aware, we initiated an effort early this year to develop Departmental directives to guide more effective and consistent oversight for safety as well as for other critical functions such as security, cyber security, and emergency management. We have drafted a new Policy and an associated DOE Notice that provides implementation instructions. Copies of these draft directives have been provided to the Board staff concurrent with the Department's internal review of the draft documents. We welcome input from the Board as we move forward with implementing this important tool for improving the effectiveness of our safety and security programs.



Kyle McSllarrow began serving as the Deputy Secretary of Energy on November 27, 2002. He previously served as Chief of Staff of the Department of Energy since January 2001.

As Deputy Secretary, McSllarrow serves as the Chief Operating Officer (COO) of the Department of Energy, an agency with over 100,000 federal and contractor employees, 17 national labs, and a budget of \$22 billion. He exercises policy and programmatic oversight over a diverse agency that includes the nation's nuclear weapons complex, non-proliferation programs, a \$7 billion environmental cleanup program, and a research and development portfolio that includes high energy physics and the development of advanced technology to strengthen the nation's energy and homeland security.

As COO, McSllarrow serves on the President's Management Council. He also serves as the American co-chair of the US-Russia Energy Working Group established by Presidents Bush and Putin.

Prior to joining the Department of Energy, McSllarrow served as Vice President of Political and Government Affairs for Grassroots.com, a privately-held Internet company marketing web-based political tools and services.

McSllarrow has held numerous positions in the political arena. He most recently served as the National Chairman for the Quayle 2000 Presidential Campaign from November 1998 to February 2000. In 1997, McSllarrow joined the office of the late U.S. Senator Paul Coverdell as Chief of Staff. McSllarrow also served as Deputy Chief of Staff and Chief Counsel for Senate Majority Leaders Bob Dole and Trent Lott between 1995 and 1997. McSllarrow was the Republican nominee in Virginia's 8th Congressional District in 1992 and 1994.

Before moving to Capitol Hill in 1995, McSllarrow was an associate with the Washington, D.C law firm of Hunton & Williams. As a Captain in the US Army, McSllarrow served in the Secretary of the Army's office as Assistant to the General Counsel of the Army from 1985-1989.

McSllarrow, a native of Virginia, earned degrees from Cornell University and the University of Virginia School of Law. He and his wife, Alison, live in Falls Church, Virginia.