



Los Alamos Study Group

Nuclear Disarmament • Environmental Protection • Social Justice • Economic Sustainability

August 27, 2018

Mr. Bruce Hamilton, Acting Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, Suite 700
Washington, DC 20004-2901

Re: Part 1 of our comments on DOE Order 140.1, in time for your hearing tomorrow; more specific comments will follow in Part 2

Acting Chairman Hamilton:

We view the subject Order with great concern. We believe it violates the overall intent as well as *many* specific sections of the Atomic Energy Act (AEA) as amended, [42 U.S.C. §2286 et. seq.](#)

Order 140.1 will greatly undermine the operation of the Board, increase overhead tremendously in both the Department of Energy (DOE) and DNFSB, and will have the practical effect of making the DNFSB largely a figurehead agency – if it is not beginning to do so already through its effect on morale, in combination with other factors.

The Order, as DOE's [May 14, 2018 Roll-Out Briefing](#) makes crystal clear, confines DNFSB's oversight mandate to:

- a) only those facilities which have known potential public health and safety impacts, i.e. to Hazard Category 1 and 2 (HC-1 and -2) facilities; and
- b) only those safety issues potentially affecting *public* health and safety, a category of persons carefully defined as excluding
 - i) workers in any defense nuclear facility, and
 - ii) co-located workers on the same site.

Under the terms of the Order, the DNFSB is rendered completely powerless to protect worker safety and health at *most* DOE nuclear facilities (upon information and belief, about 60% of DOE nuclear facilities are HC-3 facilities). For these HC-3 facilities, Board concerns about “worker and co-located worker protection *should be taken under consideration as appropriate,*” ([op. cit.](#), slide 15, emphasis added) – that is, neither DOE nor its contractors are under any obligation to actually respond to DNFSB concerns, *if such concerns could even be formulated given the lack of access codified in this Order.*

The first (and overarching) subject of my June 21, 2018 [briefing](#) to the Board was what we believe to be an urgent need for an “all-risk” nuclear worker safety initiative, to be spearheaded by the Board. *The Board's enabling legislation contains no mention of worker safety.* Nuclear worker safety is just not an explicit mission of the Board (§2286a(a)).

At the same time, no *other* federal agency external to DOE has any advisory or regulatory power to protect defense nuclear workers.

Until DOE Order 140.1, protection of workers was an *implicit* (and *traditional*) Board mission. The Board's mandate does include (for example) review and evaluation of the content and implementation of *all* DOE standards relating to the design, construction, operation, and decommissioning of *all* defense nuclear facilities, which includes worker safety standards and their implementation.

The Board's mandate also includes the investigation of *any* event or practice at a DOE defense nuclear facility which has affected or *could* affect public health and safety, which includes events and practices which also bear on worker safety. The Board's mandate includes access to *all* safety analysis reports from *any* DOE defense nuclear facility.

These mandates have provided the Board with what amounts to worker safety advisory obligations, however indirect and incomplete they may be.

Unfortunately, the authors of DOE O. 140.1 have made it very clear that *workers* are not members of the "public" ([op. cit.](#), slide 14), and thus do not fall – as far as DOE is concerned – under the (advisory) protection of DNFSB's overall mandate.

Under DOE Order 140.1, DOE will decide as to whether a given document or facility or operation bears merely on *worker* safety and health – in which case the default decision will be to deny access as not germane to the Board's public safety mandate – or else the issue does rise to a question of off-site *public* safety and health, in which case access *may* be granted subject to brand-new conditions and controls.

Just how illegal all these new provisions are will be the subject of Part 2 of these comments.

DOE nuclear facilities are typically located on very large sites, sometimes on the order of tens of square miles (e.g. Los Alamos National Laboratory, LANL, or Pantex) or even hundreds of square miles (the Savannah River Site and the Hanford Site). Within these sites, nuclear facilities may be located miles from the public. Geography at these sites can and does largely de-couple decisions affecting public safety and health from decisions affecting worker safety and health. That "de-coupling" would become even more extreme under this Order, to the detriment of the safety of defense nuclear workers.

We believe the Board would be well-advised to make it clear to Congress that, under the terms of this Order – or any variations of it – the Board will be unable to help protect DOE atomic energy defense workers from nuclear hazards.

At a minimum, Congress should expand DNFSB's mandate to explicitly advise DOE on worker safety and health, in parallel to DNFSB's public safety and health mandate. As I said on June 21, we believe the Board should request this expansion of responsibilities right now, to remedy the original defect in its mandate.

It goes almost without saying that the DNFSB is not a regulatory body and thus, contrary to DOE's view, does not fall under the purview of Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

I don't need to remind you that the health and stability of the defense nuclear facility workforce is essential to the stable, continuous operation of defense nuclear facilities.

For the Study Group,

Greg Mello, Executive Director

cc: Secretary Rick Perry
Administrator Lisa Gordon-Hagerty