

COMMENTS TO THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD
on DOE ORDER 140.1
28 SEPTEMBER 2018

To Bruce Hamilton, Acting Chairman
Jessie Hill Roberson
Daniel J Santos
Joyce L Connery

Please accept these comments on behalf of the Oak Ridge Environmental Peace Alliance in response to the Department of Energy's effort to improperly constrain the work of the Defense Nuclear Facilities Safety Board through the promulgation of DOE Order 140.1, *Interface with the Defense Nuclear Facilities Safety Board*, in April 2018. We appreciate that the Safety Board took the time and went to the effort to hold a public hearing on this matter in August, and further provided the public with an opportunity to comment on the DOE Order. It is unfortunate that neither the Department of Energy nor the National Nuclear Security Administration was willing to provide the public with information about the Order and/or an opportunity to comment prior to imposing the Order.

We believe it is impossible to reconcile DOE Order 140.1 with the authorization language that lays out DNFSB's mission to "provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary...in providing adequate protection of public health and safety at defense nuclear facilities." The effort by DOE/NNSA to constrain DNFSB's reach and access to information clearly undermines the Safety Board's independence.

It is appropriate for DOE/NNSA to establish for itself the protocols and methodology of communication between federal employees, the contractors who work for them, and outside entities, and DOE/NNSA exercise great latitude when it comes to sharing information with the public and the media. This makes it all the more important that at least one independent body has unfettered access to information and personnel in the workplace in order to provide a modicum of oversight over DOE/NNSA nuclear operations.

Two key points are worth noting. One: the mandate of the Safety Board, captured in its name, already constrains the work of the Board—to safety issues only at defense nuclear facilities only. Since its inception, the Safety Board has been scrupulous about adhering to that mandate in its strictest interpretation. The DOE Order, attempting to further limit the purview of the Safety Board to greater than Class 3 facilities, is unnecessary, unwise, and unacceptable. Any facility that qualifies as a defense nuclear facility warrants the attention of the Safety Board.

Two: The Safety Board already deploys limited personnel at key DOE/NNSA sites and exercises less frequent oversight at other DOE/NNSA defense nuclear facilities. For instance, with more than 4,000 federal employees at DOE's Oak Ridge Nuclear Reservation, and DOE/NNSA defense nuclear facilities at both Oak Ridge National Laboratory and the Y-12 National Security Complex, DNFSB deploys two technical staff members as on-site representatives. The presence and work of these

two persons, while it has proven highly valuable from the standpoint of ferreting out safety issues and providing information to the Secretary of Energy, Congress and the public, hardly represents a significant imposition on the time and resources of DOE/NNSA or the site contractors.

Which brings us to the work DNFSB does and its importance to DOE/NNSA's missions and to workers and the public.

DOE Order 140.1 removes worker health issues from the Safety Board's purview and attempts to limit the Safety Board's authority to issues that would impact the off-site public only. This is not only absurd, it is outrageous. Workers are, of course, the first line of exposure and bear the greatest risk of any safety failures. They are also critical to the success of DOE/NNSA's mission. From the standpoint of DOE/NNSA, workers should deserve the highest level of protection, thereby providing the greatest level of assurance of mission success. DOE/NNSA already exempts itself from worker protection by the Occupational Safety and Health Administration and has, since 1999, paid billions of dollars in compensation to workers who have suffered health and safety injuries from workplace exposures and accidents. This is *not* an agency with a great track record for worker protection.

At the same time, workers are, unfortunately and unavoidably, the harbingers of risks to the public. Like the proverbial canary in a coal mine, workers will suffer first from exposures, accidents and incidents. Because of their proximity to workplace risks, they are also likely to suffer most visibly. To suggest that the Safety Board should not have the authority to intervene on behalf of workers but must instead wait until risks are felt or can be projected to be felt by the off-site public is as ludicrous and perilous as ignoring the demise of canaries and carrying on until miners themselves begin to fall.

It is in the best interest of the public, and the workers, and the DOE/NNSA, for worker safety and health issues to be monitored and safeguarded by every means available, including those afforded by the oversight of the DNFSB. The motto of DOE/NNSA should be "If you see something, say something," and having heard, DOE/NNSA should be compelled to respond.

The track record of the Safety Board at DOE nuclear sites is remarkable—issues identified by the Safety Board have saved taxpayers untold millions of dollars, and failure to respond to Safety Board concerns have likewise cost taxpayers hundreds of millions of dollars, as in the instance of the "space/fit" issue with the Uranium Processing Facility in Oak Ridge. Early on in the design process, the Safety Board expressed concern that DOE/NNSA was neglecting its own DOE guidance that safety should be integrated into the design and planning process at the earliest stages. NNSA chose to proceed without preparing full safety documentation, a factor that contributed significantly to the space/fit issue which cost taxpayers, according to the NNSA, more than half a billion dollars.

The Safety Board has also been a defender of public safety in Oak Ridge. On the one hand, it is understandable that DOE/NNSA chafe under the persistent pressure of the Safety Board to address all relevant safety concerns. On the other hand, without the Safety Board's oversight, the public would be subject to risks solely at the discretion of the DOE/NNSA. We would not even know about, let alone consent to, the risks imposed on us by DOE/NNSA. The condition of Buildings 9215

and 9204-2E are a case in point. When DOE/NNSA made a decision to revamp its Enriched Uranium plan and press these two deteriorating and noncompliant buildings into service for another 20-30 years, the public was given scant information about the condition of the buildings. It was the Safety Board that raised concerns about the noncompliance of the facilities. Informed with those concerns, the public has been able to press for more information—the 2018 Supplement Analysis from DOE/NNSA reveals that they have adopted a policy of “risk acceptance,” essentially declaring that certain levels of risk to workers and public will be deemed acceptable by DOE/NNSA. Of course, this is both outrageous and unethical—it is also something we would likely have never known about except for a chain of events that began five years ago when the Safety Board indicated there were safety concerns about those buildings.

During the August hearing on DOE Order 140.1 in Washington, DC, officials from the Department of Energy and the National Nuclear Security Administration seemed, in their testimony, almost to disavow the plain language of the Order. On more than one occasion, they claimed that they were currently training managers in the implementation of the Order and telling them, in essence, not to adhere to the clear language of the Order.

This sounded disingenuous and self-serving, a suspicion that was further heightened by the failure of DOE/NNSA officials to provide any of the training materials.

Safety Board personnel pointed out that, even if the most generous interpretation of that testimony were applied, succeeding generations would not have the benefit of this “we don’t really mean it” training regime and would instead have to fall back on the plain language of the Order. This was a clear example of DNFSB’s common sense rubbing up against NNSA’s attempt to make the world as it wishes it were. It was also a near-perfect illustration of the work of DNFSB at our sites.

Whether by design, or as a result of pressures of budget or schedule, DOE/NNSA often are driven to proceed with work under the most optimistic of assumptions, balancing many demands, weighing multiple factors, hoping that everything will work out like they want it to. Sometimes this includes sidestepping or overlooking certain protocols or procedures. Those are the moments when the Safety Board proves to be a great investment for taxpayers, workers, the public and even DOE/NNSA. The Safety Board, after all, has only one mission and one priority—safety. By applying common sense, the Safety Board is often able to identify ill-conceived processes or schedules leading to them being reined in until safety issues are addressed and resolved. Often this happens with little inconvenience—issues identified by the Board are resolved in a collegial way on site, and we simply read about it in a Weekly Report.

Other times, the concerns of the Safety Board prove inconvenient to contractors or federal officials. These are the times, one presumes, that have given rise to DOE Order 140.1. They are also precisely the times that demonstrate the critical nature of the Safety Board’s work. If inconvenience or delay arise from the need to resolve safety issues, that is the price of doing business. It is a price taxpayers will willingly pay to have assurances that their health and safety, and the

health and safety of workers, are being looked after and, at least by the Safety Board, prioritized.

OREPA, along with our colleagues in the Alliance for Nuclear Accountability, have called on Secretary of Energy Perry to rescind DOE Order 140.1. We have also communicated our concerns to Congressional staff on the House Armed Services Committee and the Senate Appropriations Energy and Water Development subcommittee.

We urge the Safety Board to resist any and all efforts by DOE/NNSA to constrain access to documents, personnel, facilities, or any other information necessary for you to do your job. We value the work of the Safety Board highly. We appreciate your commitment to fulfill your mandate in a disciplined and thorough manner, and we hail your commitment to transparency as an example of how democracy works.

We understand that the Safety Board is contemplating holding at least one more hearing on DOE Order 140.1. We would welcome an opportunity to participate in that hearing and are happy to invite you to come to Oak Ridge to hear from the public who are affected by your work and by DOE Order 140.1

Thank you for the opportunity to comment. If you have any questions or a need for further information, please don't hesitate to contact us.

Sincerely,
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