

Bruce Hamilton

From: Bruce Hamilton
Sent: Monday, 07 May, 2018 14:05
To: Lisa E. Gordon-Hagerty
Subject: DRAFT DOE Order 140.1

Dear Administrator Gordon-Hagerty:

Thank you for the opportunity to view a preliminary draft of DOE Order 140.1. The informal suggestions for consideration that I have collected below do not represent an official act or viewpoint of the Board. The Board reserves the right to comment on this Order, either before or after its issuance.

1. Paragraph 3.a. and Paragraph 3.c.(2), taken together, seem to imply that DNFSB access is excluded from HazCat 3 facilities and below. The DNFSB's portion of the Atomic Energy Act does not speak to Hazard Categories. Consequently, there is no statutory basis to limit the DNFSB's access to certain Hazard Categories. It is unlikely that this Board or future Boards would respect such a restriction to their oversight. You may want to consider deleting the references to Hazard Categories, as they establish a situation which may lead to future and frequent conflicts between DOE and the Board.
2. Paragraph 3.c.(4) implies that DNFSB has no oversight for on-site transportation, however, there are cases where such activities are within the Board's purview, such as when transporting materials within certain defense nuclear facilities themselves. Some additional clarity may be in order.
3. Paragraph 4.b.(2)(c). This exclusion is very broad and may have unintended interpretations. For example, the Board has statutory authority for design and construction during the process, which will in many cases be in the predecisional phase. Another example, Board Members and Agency staff frequently and appropriately attend emergency exercises, which include, "... deliberative meetings or discussions supporting the development of predecisional or other process draft documents." The Board may not respect such broad sweeping limits to its access to information. You may want to tighten the wording.
4. Paragraph 4.b.(15). I was initially confused by the second sentence, the "Note." It sounded as if DOE is not required to respond to DNFSB's reporting requirements. It took me several readings to realize that the intent was that a reporting requirement does not require action beyond providing the report itself. You may want to re-word this paragraph.
5. Paragraph 7.h. Limiting the Public Health and Safety to those individuals beyond the site boundaries is inconsistent with long-standing legal interpretations of the Atomic Energy Act. I doubt that this or future Boards will limit their oversight, advice and recommendations as narrowly as is defined in this paragraph. You may want to revise it to reflect historical legal interpretations.

Yours truly,
Bruce Hamilton
Acting Chairman
Defense Nuclear Facilities Safety Board