



A national network of organizations working to address
issues of nuclear weapons production and waste cleanup

November 27, 2018

RE: DOE Order 140.1 should be annulled by Congress

Dear House/Senate Armed Services Committee Members:

We are writing to ask that you annul the May 2018 DOE Order 140.1, *Interface with the Defense Nuclear Facilities Safety Board and reinstate the previous DOE Order 140.1*.

The Defense Nuclear Facilities Safety Board (“DNFSB” or “Safety Board”) was established by Congress in September 1988 (Public Law 100-456) in response to growing concerns about health and safety protection that the Department of Energy (“DOE”) was providing the public and workers at defense nuclear facilities. In so doing, Congress sought to provide the general public with an independent source of critical oversight to add assurance that DOE’s defense nuclear facilities are safely designed, constructed, operated, and decommissioned. Over the past 30 years, the Safety Board’s authority and funding has been supported by Congress on a bi-partisan basis.

In the law authorizing DNFSB, Congress clearly stated:

“The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information *as the Board considers necessary to carry out its responsibilities* under this subchapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor’s consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor *as the Board considers necessary to carry out its responsibilities* under this subchapter.” 42 U.S.C. 2286c(a). *Emphasis added.*

The Safety Board’s independence and ability to carry out its statutory authority is directly threatened by the revised DOE Order 140.1, promulgated in April 2018 and approved in May. This order severely constrains the Safety Board’s access to information, facilities, documents and personnel.

On August 27, 2018, we wrote to Secretary of Energy Perry (copy attached) about DOE Order 140.1, asking him to rescind the order, or to suspend the Order while the Department heard and considered public input at each defense nuclear facility site before further implementing the Order. Neither action has been taken, nor have we received acknowledgement of our letter.

The Safety Board itself has unanimously expressed its position that “*the Order wrongly attempts to diminish the authority granted by Congress for the Board to provide independent analysis, advice, and recommendations to the Secretary of Energy in providing adequate protection of public health and safety at defense nuclear facilities.*”¹

Although the DOE has not held hearings or engaged in a public process to receive input from the concerned public or stakeholders at key defense nuclear facilities, we are grateful that DNFSB’s August 28, 2018 hearing included an opportunity for public comment. DNFSB will conduct additional hearings regarding Order 140.1 in Washington, DC on November 28, 2018 and in New Mexico in February 2019 and will include opportunities for further public input. The Alliance for Nuclear Accountability and its member organizations are participating in these opportunities to provide our informed expertise and concerns about health and safety protections at defense nuclear facilities and the vital role of DNFSB.

The attached fact sheet provides some of the many examples of the Safety Board’s important work at nuclear facilities. The DNFSB offers a level of oversight and accountability that would not otherwise exist. We appreciate the level of expertise and discipline the Safety Board brings to its work; we also appreciate the transparency that is built into the Safety Board’s modus operandi. Often, we get our first information (and too often, our *only* information) about worker and public health hazards from DNFSB reports.

DOE Order 140.1 prevents the Safety Board from having anything to do with matters that do not clearly and directly impact public safety outside of DOE site boundaries, thus DNFSB’s role in protecting worker safety and health is exempted in an unprecedented way. The order removes the Hazard Category 3 or lower hazard facilities from the Board’s oversight altogether, eliminates the Board’s access to pre-decisional documents, deliberative meetings and processes, and greatly limits access to contractor personnel. Since the Order was approved in May, it has already limited the flow of information from defense nuclear sites to the Board, workers, and the public—creating a chilling effect and endangering worker and public health and safety.

As you consider the National Defense Authorization Act for FY 2020, we urge you annul the May 2018 DOE Order 140.1 and reinstate the previous version of the Order. We also ask that you include provisions requiring any future revisions of DOE orders related to DNFSB to have prior public notice and comment and consultations

with DNFSB, none of which occurred before the implementation of DOE Order 140.1.

The Alliance for Nuclear Accountability (ANA) is a national network of organizations working to address issues of nuclear weapons production and waste cleanup. Our more than 30 member organizations are located near DOE and National Nuclear Security Administration sites and have extensive experience with DOE operations across the weapons complex and the work of the Safety Board.

We greatly appreciate your support for the DNFSB and your consideration of our requests. We would be pleased to provide additional information to the committees. You may contact me directly or Kathy Crandall Robinson at kathycrandallrobinson@gmail.com.

Sincerely,

A handwritten signature in black ink that reads "Ralph Hutchison". The signature is written in a cursive style with a long horizontal flourish at the end.

Ralph Hutchison,
President
orep@earthlink.net
[865-776-5050](tel:865-776-5050)

1. 17 September 2018, letter from DNFSB to Secretary of Energy Perry:
[https://www.dnfsb.gov/sites/default/files/document/16011/Regarding DOE Order 140.1 %5B2018-100-064%5D.pdf](https://www.dnfsb.gov/sites/default/files/document/16011/Regarding%20DOE%20Order%20140.1%20-%202018-100-064.pdf)