

ENVIRONMENT, ENERGY AND LAND-USE

Proposed Resolution Requesting the Department of Energy rescind or revise Order 140.1 to remove restrictions on the Department of Energy's Defense Nuclear Facilities Safety Board

Issue: Rule change at Department of Energy impacts Defense Nuclear Facilities Safety Board's ability to protect workers and public health and safety.

Proposed Policy: NACo urges the Department of Energy (DOE) to rescind or substantially revise Order 140.1 and clarify the Defense Nuclear Facilities Safety Board's (DNFSB) full authority to protect health and safety of the public and workers with full access to DOE facilities and information as directed by statute and created by Congress in 1989.

Background: The Defense Nuclear Facilities Safety Board (DNFSB) was created in Congress to provide oversight and information to the public on safety issues related to Department of Energy's (DOE) nuclear facilities. In operation since October 1989, the DNFSB reviews and evaluates the content and implementation of health and safety standards, as well as other requirements, relating to the design, construction, operation, and decommissioning of the facilities.

However, in May 2018, the DOE released Order 140.1 "Interface with the Defense Nuclear Facilities Safety Board," which takes away DNFSB's oversight for eighteen (18) facilities across 12 states including:

- California (Lawrence Livermore National Laboratory);
- Colorado (Rocky Flats Environmental Technology Site);
- Idaho (Idaho National Laboratory);
- Ohio (Fernald Closure Project and Mound);
- Missouri (Kansas City National Security Campus);
- Nevada (Nevada National Security Site);
- New Mexico (Los Alamos National Laboratory, Sandia National Lab., Waste Isolation Pilot Plant);
- New York (West Valley Demonstration Project);
- South Carolina (Savannah River Site);
- Tennessee (Y-12 National Security Complex, Oak Ridge National Laboratory, Tennessee Valley Authority, Watts Barr Reactor);
- Texas (Pantex); and
- Washington (Hanford)

DOE Order 140.1 improperly impedes the DNFSB's ability to obtain the information it needs from DOE staff and contractors. In particular, Order 140.1 could result in DOE staff and / or contractors improperly restricting access to and information about defense nuclear facilities to the DNFSB.

Specifically, the Order appears to be in conflict with existing statutory language:

First, the Order at Paragraph 4(b)(2)(b) authorizes DOE "Departmental Elements" acting at the direction of the Secretary or the Secretary's designee, to deny access to information "where the person requesting the information does not need such access in connection with his/her duties." This provision appears to grant the Secretary or the Secretary's designee blanket power to unilaterally determine what information the DNFSB needs to know to perform its independent advisory function.

Second, the Order at Paragraph 4(b)(2) appears to improperly limit DNFSB access to only “completed documents” in two key areas. One is where the documents contain DOE decisions on the safe design and operations of defense nuclear facilities, with examples given of safety basis documents, safety evaluation reports, and design, construction, and operation Standards. The other is where the documents “represent [] any event or practice at a defense nuclear facility which the DNFSB considers may adversely affect public health or safety”, with the example provided of “approved results of fact-finding review and investigations”. The obvious concern here is that DOE could deny DNFSB access to critical decisional and investigative documents indefinitely on the grounds that they are not yet completed or approved.

Third, the Order at Paragraph 4(b)(3) and 4(b)(4) could prevent DOE contractors from responding to otherwise proper requests for information or access by the DNFSB without formal authorization from a designated DOE representative. These provisions discourage transparency and are contrary to the spirit if not the letter of 42 U.S.C. Section 2286(c)(a). DNFSB inspectors should have unfettered and unfiltered access to DOE contractors and their employees at defense nuclear facilities.

Fourth, the Order at Paragraph 7(h) provides a restrictive definition of “public health and safety” that appears to conflict with the provisions of the DNFSB’s enabling act. In the Order 140.1, “public health and safety” is limited to the “health and safety of individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities.” The DNFSB’s enabling act in no way restricts the Board’s mission to advising the Secretary on protecting the public health and safety of individuals living and working outside a defense nuclear facility. 42 U.S.C. Section 2286(a)(a) in fact expressly states that the DNFSB’s mission is to inform and advise the Secretary “in providing adequate protection of public and safety at such defense nuclear facilities”, and not just outside the facilities.

The DNFSB produces a weekly report which highlights all violations found at each facility in the country. If the DNFSB’s access to information is denied or blocked, it will greatly affect the quality of their weekly reports which will in turn prevent county leadership from receiving crucial information that would impact the health and safety of its constituents.

For example, the contractors at LANL’s Radiological Laboratory Utility Office Building noticed a leak emanating from a valve on the radioactive liquid waste system which may have installed 6 carbon steel valves that are incompatible with radioactive liquid waste. The DNFSB has been excluded from seeing early design, where they would have caught this mistake.

Congress is debating policy now specifically in the FY2020 National Defense Authorization Act (NDAA). U.S. Senators Tom Udall and Martin Heinrich have proposed amendments to the National Defense Authorization Act (NDAA), a major defense policy bill, on Order 140.1. This is likely to be the first such amendment over the course of the next year.

Fiscal/Urban/Rural Impact: Exposure to nuclear materials and unsafe workers’ conditions.

Sponsor: Anna Hansen, Commissioner, Santa Fe County, N.M.