



**TESTIMONY
ON BEHALF OF
THE ENERGY COMMUNITIES ALLIANCE
REGARDING**

**U.S. DEPARTMENT OF ENERGY'S NEW ORDER, 140.1,
INTERFACE WITH DEFENSE NUCLEAR FACILITIES SAFETY
BOARD**

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD PUBLIC
HEARING
NOVEMBER 28, 2018**

Chairman Hamilton, members of the Defense Nuclear Facilities Safety Board (DNFSB), I appreciate the opportunity to provide public comment here today on behalf of the Energy Communities Alliance (ECA). ECA is the organization of local communities adjacent to or hosting U.S. Department of Energy (DOE) and National Nuclear Security Administration (NNSA) facilities, communities that will be directly impacted by how policies such as Order 140.1 are implemented.

As ECA testified on August 28, 2018 at DNFSB's public hearing on the implementation on DOE Order 140.1, *Interface with the Defense Nuclear Facilities Safety Board*, DNFSB has an important role in providing the only independent oversight of DOE's nuclear activities, and we agree that operations can and should improve.

Since that public hearing in August, ECA has met with DOE officials to express our concerns and to better understand DOE's reasoning for the new Order 140.1. It was very beneficial to speak with DOE directly and explain that while we agree with many of DOE's goals – including improving operations, safety, and decreasing costs – the Order needs clarification. As we noted directly to DOE, in its current iteration, the Order could negatively impact DNFSB's efforts to provide independent oversight. We also identified that our primary concerns are ensuring the safety of the workers and communities at the sites. We did conclude after the meetings with DOE that with some modification to the written Order, ECA could support implementing changes going forward.

We ask that DNFSB identify specific suggested language changes to the Order and meet with DOE on the proposal to try to resolve differences. Everyone we speak with identifies that the relationship between DOE and DNFSB is important. Primary clarifications that we would like to see include, but are not limited to:

- (i) Access – DOE/NNSA staff seemed to testify that DNFSB would have access if requested to Hazard Category 3 or below sites (and not just information) but the Order restricts this access. We understand that there are some reasonable terms that each could agree on related to access to such sites that in no way impacts the statutory authority of DNFSB;

- (ii) Oversight on-site – The language attempting to define “public health and safety” as only the “health and safety of individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities” is unclear. However, if the intent is to use the definitions of risk as defined by DOE, NRC and others to address risk factors related to operations then the language should be stated in a way that does not give someone the impression that DNFSB should not have any oversight of any DOE/NNSA on-site activities (since all problems that have ever occurred off site are caused by on-site activities); and
- (iii) Restrictions on access to information – restrictions on “pre-decisional” and other similar information does not make sense, is unclear and too restrictive since many DOE/NNSA decisions can be delayed for years. For example, would DNFSB only have access to information after a record of decision (ROD) or other similar DOE/NNSA action is signed? At that point it may be too late for input on an issue that impacts human health and safety on and off-site. Based on ECA’s discussions, DOE’s intent seems to be to ensure that DNFSB is reviewing DOE’s decisions and not its analysis of options that may never be pursued.

ECA will be providing suggestions to DOE and DNFSB on the proposed specific language in the Order.

ECA’s maintains that the independent oversight role that DNFSB fills is necessary to the safety of the communities and to the workers at the NNNSA and DOE facilities. In addition, DNFSB should also review its own operations. ECA made recommendations to DNFSB several years ago including:

- **DNFSB should work together with DOE/NNSA to ensure open communications and jointly develop solutions to the problems identified in its reports.** Increased communication can ensure a shared understanding of a problem and buy-in for a proposed solution not only at the federal level but in host communities that see a well-coordinated effort to identify the best path forward.

- **DNFSB should prioritize communication with the communities most directly impacted by its reports and decisions in order to ensure there are opportunities for meaningful, timely input before recommendations are made.** DNFSB needs to host public meetings in the communities that will be directly impacted by its findings or recommendations to ensure those stakeholders can participate.
- **DNFSB should include a cost-benefit and risk-reduction analysis to ensure that they take into account budgets and feasibility when developing any recommendations.** In the past, DNFSB has made recommendations without taking into account what DOE/NNSA can realistically accomplish under limited budgets. It is important that DNFSB understand all the issues at play in order to develop more achievable, legitimate recommendations that still fulfill missions at the sites while being protective of public health and safety.
- **DNFSB staff and members should heed its independent oversight role and recuse themselves if any possibility of bias or opposition to a project exists.** In order to serve its trusted, independent third-party oversight role, DNFSB needs to ensure that its analyses and project reviews are based solely on facts and science.

ECA urges DOE to work cooperatively with DNFSB to ensure that the language of the new Order aligns with the Department's actual goals to increase the efficiency of their interactions and the health and safety of work and workers in communities supporting the nuclear weapons complex.