

Comments on the Department of Energy Order 140.1, Interface with the Defense Nuclear Facilities Safety Board

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on Behalf of

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Thank you very much for the opportunity to participate in this hearing and to provide comments today.

I am speaking for both the Alliance for Nuclear Accountability (ANA) and Tri-Valley Communities Against a Radioactive Environment (Tri-Valley CAREs). ANA is a national network of more than 30 organizations located near Department of Energy (DOE) and National Nuclear Security Administration (NNSA) defense nuclear facilities, including Tri-Valley CAREs located near Lawrence Livermore National Laboratory.

For over 30 years, ANA leaders have addressed nuclear weapons production and waste cleanup issues across the nuclear weapons complex. ANA and its member groups have extensive experience working with DOE, NNSA and the Safety Board.

We are deeply concerned that Order 140.1 constrains crucial oversight activities of the DNFSB and thereby endangers public and worker health and safety.

Since its establishment, the Safety Board has played a vital role protecting public health and safety in carrying out its mission. The DNFSB has identified numerous safety hazards like the build-up of explosive and flammable gasses in Hanford waste tanks, fire hazards at the Waste Isolation Pilot Plant, seismic dangers at Los Alamos, bulging and mislabeled waste storage drums at Oak Ridge, and many more.

Advice from the Safety Board has led to changes in safety design for facilities such as the Uranium Processing Facility and has identified corrective actions and safety culture improvements at sites across the nuclear weapons complex.

Stakeholders and community leaders have high praise for the information that they learn about the sites from the regular site reports provided by the DNFSB. (Please see [“Voices Across the Weapons Complex – A Sampling of DNFSB Work at Sites of ANA Members.”](#))

A particularly egregious problem with Order 140.1 is that it redefines and limits the role of DNFSB in protecting worker safety and health. Yet the Safety Board has been crucial to protecting workers. To cite one example, the enormous importance of DNFSB’s role

in conveying information and carefully keeping records is highlighted in a recent *Santa Fe New Mexican* story entitled, ["Exposed: The life and death of Chad Walde."](#) The news article details Mr. Walde's journey working in high radiation areas at Los Alamos National Labs, from the fall of 1999 to September 2014, and it cites DNFSB reports as evidence of exposures.

Walde received high doses, was scrubbed down on more than one occasion, and was told to stay home for various periods of time. In 2014, he came down with Stage 4 glioblastoma, a rare brain cancer. When he applied for medical care and compensation, the exposure records were gone, but, notably, the DNFSB reports remained. Unfortunately, in early 2017, Mr. Walde died at age 44.

Many ANA and Tri-Valley CAREs members recall that in the decades before the DNFSB was created, major accidents, spills and release were considered "routine" and justified in the service of a mentality of "production first, and safety second - at best." Livermore Lab suffered major tritium accidents; plutonium and curium fires; a burst glove box; a nuclear criticality accident, and numerous other mishaps. And Livermore is neither unique nor the site of the worst nuclear accidents in the DOE nuclear weapons complex.

Order 140.1, with its degradation of DNFSB's role and authority, threatens to send us on a glide path back to a careless era as if this were a time when safety concerns and dangers at nuclear weapons facilities are shrinking. They are not. Instead, there are aging facilities, facilities operating where serious safety concerns have been raised, and some facilities where plans for increased production of nuclear weapons components could lead to novel dangers. For example, the President's Nuclear Posture Review calls for production of 80 plutonium pits per year by 2030 and plans are being laid for increased pit production at Los Alamos as well as new capabilities at Savannah River Site.

We are in accord with the unified voices of this Board that have communicated to Congress that *"the Secretary's 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."* ([DNFSB letter](#) to the House Armed Services Committee, September 17, 2018). We share the major concerns the Safety Board has carefully explained. We especially highlight these specific problematic issues.

1) The notion that the DNFSB role of protecting public health applies only outside of site boundaries, leading to the related exemption of Hazard Category 3 and facilities below this hazard level as well as the dismissal of a DNFSB role in worker health and safety.

Many of the risky facilities now under DNFSB's purview fall into Hazard Category 3, and these facilities can and do change in their hazard classification. Two

specific examples are Livermore's problem-plagued Tritium Facility that is a Hazard Category 3, and the Los Alamos National Laboratory the Radiological Laboratory Utility Office Building (RLUOB) that is slated to become a Hazard Category 3 facility.

DOE's publicly available PowerPoint presentation, "Roll-out Information and Training," for Order 140.1 states: "*By definition, Hazard Category 3 nuclear facilities have the potential for only significant localized risks, as opposed to risks to the public, and are therefore exempted by the Order.*"

At Livermore this seems a particularly flawed argument when the public is so closely located to many of the facilities. In fact, the public is closer than many of the "co-located workers" in other areas of the Livermore site. Even at other sites in the nuclear weapons complex where there is more physical separation, "significant localized risks" should be overseen by the DNFSB. We have seen negligence with dangerous materials result in releases to the air and water passing through boundaries. And, contamination and radiation can be carried home by workers who live in our communities.

Curtailing DNFSB oversight of worker health and safety is a dangerous, tragic mistake. Worker safety is what assures public safety; they cannot be delinked. Indeed, the previous Order 140. 1-1A (superseded by the current order) specifically stated, "The Department and the Board share the common goal of ensuring adequate protection of public *and worker health and safety* and the environment at Departmental defense nuclear facilities." Order 140.1-1A, Overview Sec. 1(c), emphasis added.

2) Constrained access to contractors and site workers.

The new Order sets forth constraints such as formal Departmental Liaisons who are gate-keepers for DNFSB interactions with contractors and site workers. The new procedures seem cumbersome and counterproductive. Further, this seems to run counter to enabling legislation that directs, "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*.

3) Ability to deny access to predecisional documents and deliberative meetings.

One area of concern is access to early construction design. It is less helpful and more expensive for safety design flaws to be discovered at later stages. (The Uranium Processing Facility "design-fit" fiasco is one example of many.) In

general, the DNFSB's expertise and safety perspective will be most helpful in developing orders, procedures, and requirements that help to address safety concerns at the earliest stage. The Safety Board does not have regulatory authority to sanction or stop a decision, instead its value is in providing sound information and advice. That advice is most useful at the deliberative, predecisional phase.

The constraints of this Order taken together limit the flow of and access to information. These constraints will likely have a chilling effect on DNFSB site representatives and inspectors seeking information, as well as workers and contractors providing information at key sites. In addition, information flowing to the public and stakeholders at sites is curtailed. The goal of preventing safety incidents at the earliest stages is thwarted by what seem to be adversarial bureaucratic hurdles.

It is especially worrisome that there was so little iterative and collaborative discussion in developing this Order with the Safety Board, stakeholders, workers and contractors on the sites, and apparently little discussion with Congress.

On August 27, ANA sent a [letter](#) calling upon the Department of Energy to rescind this Order 140.1, or at least hold it in abeyance while DOE holds public hearings at each site subject to DNFSB oversight. The purpose of the public hearings would be to explain to workers and the public the clear meaning and import of DOE Order 140.1 Three months later, ANA has received no response from the Secretary of Energy.

On November 27, ANA sent a [letter](#) to the U.S. Senate and House Armed Services Committee Members, requesting the annulment of DOE Order 140.1 in the Fiscal Year 2020 National Defense Authorization Act. We further requested inclusion of provisions requiring any future revisions of DOE orders related to DNFSB to have prior public notice and comments as well as consultations with DNFSB, none of which happened before the implementation of DOE Order 140.1.

We thank the DNFSB for holding this hearing, the August 28 hearing, and an anticipated hearing in 2019 in New Mexico. We request an additional public hearing outside of Washington, DC and specifically recommend that this hearing be held in Washington state with a focus on Hanford.

Tri-Valley CAREs and the Alliance for Nuclear Accountability call on the DNFSB to continue to exercise the full extent of its authority in opposing the constraints that limit access to facilities, people, and information and are at the heart of this ill-conceived Order. Our members, including site workers, and our communities depend every day on DNFSB diligence.

