

Public Comment on Nuclear Safety Board's Access to Information

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes government waste, corruption, and abuse of power. We work to support the independence of oversight agencies and amplify their findings to achieve a more open and accountable federal government. The Defense Nuclear Facilities Safety Board (DNFSB) is one such agency, and POGO is concerned that a Department of Energy (DOE) directive, [DOE Order 140.1](#), significantly and improperly undermines the Board's access to defense nuclear facilities and personnel and restricts its ability to perform meaningful oversight of the matters that most affect public health and safety.

DNFSB is a small but mighty oversight body, made up of subject-matter experts, charged with ensuring that these facilities adequately protect public health and safety. Though the Board is tasked with broad oversight responsibilities, it does not have the authority of a regulator. The Board reviews safety standards, plans, and on-the-ground conditions at the 14 defense nuclear sites managed by the Department of Energy. Congress has given the Board [the authority](#) to issue public recommendations and project updates to document the results of its reviews and communicate significant safety issues, as well as hold public hearings to address any concerns about the Department's safety practices.

The DNFSB's safety reviews have uncovered serious issues at facilities across the country. At least [13 past recommendations](#) and [21 out of 41](#) technical reports have been directly related to worker safety—topics which the Board would no longer be able to investigate or offer recommendations on under the new order. Notable examples include the Board uncovering significant [seismic risks](#) in the location where the plutonium cores of nuclear weapons were constructed at the Los Alamos National Laboratory, which could have led to a catastrophic fire or the collapse of an entire facility. In 2011, [the Board found](#) that agency and contractor project management at the Hanford Site stifled workers from raising safety concerns, making it less likely that risks could be identified and resolved to prevent injuries or radiation exposure. The Board's publicly available reports allow Congress and community stakeholders to hold the Department accountable for unresolved safety issues.

The DOE prides itself on ensuring its defense nuclear sites maintain the highest levels of safety and security standards. On its face, this order appears to be intended to underscore the Department's commitment to this and its responsibility to manage risks and hold management accountable. But a closer look reveals that the real result of this order would be to restrict the Board's ability to thoroughly review and assess potentially catastrophic safety issues. The stated goal of [the order](#) is to “emphasize line management accountability and establish clear requirements and responsibilities when working with the Defense Nuclear Facilities Safety Board.” But the Board itself has raised [several concerns](#) about how the new definitions and requirements will hamstring its ability to perform meaningful safety reviews. For example, the order changes an important definition to reduce the scope of the Board's work. The [Atomic](#)

[Energy Act of 1954](#) sets forth the Board's mandate, stating it shall issue recommendations to the secretary of energy on "operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety." Order 140.1 (p. 14) narrows the definition of public health and safety to refer only to "individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities." Essentially, the Department is narrowing the Board's mandate to preclude it from issuing recommendations regarding the health and safety of workers at these sites.

This is a significant and needless change. At an [August 2018 public hearing](#), DNFSB Board Member Jessie Hill Roberson questioned Matthew Moury, Associate Under Secretary of Energy for Environment, Health, Safety and Security, about how the definitional change would be applied. Moury confirmed that the Board could no longer issue formal recommendations on issues involving worker protections. When pressed further, Moury stated that the Board should still communicate any problems it finds, just not in the form of an official recommendation.

"The Department welcomes any issues that the Defense Board has relative to worker protection," Moury stated. "The only position that we are taking is relative to the formal board recommendation process, and whether or not a worker protection should be an element of that recommendation process. And the Department's current position is that worker protection is not part of that; however, those issues should be communicated one way or another."

Without an official recommendation, however, the Department, Board, and the public cannot track these concerns or hold facilities accountable if they fail to address risks to worker health and safety. Despite the fact that the stated goal of this order is to truly streamline communication and reduce redundancies between the Department and the Board, it is clear this change does the opposite.

The Department has not yet provided a compelling reason for so dramatically reducing the scope of the Board's jurisdiction. But the Board's track record shows how important its work is for addressing these issues. Its recommendations have led to several major worker safety improvements across the nuclear complex, from removing dangerous combustible materials from the Savannah River Site and installing flammable gas monitors at the Hanford Site in 2012, to clarifying and streamlining DOE's overall nuclear safety requirements in 2010.

POGO is also concerned about the order's newly instituted requirements for how Department contractors should respond to requests for information from the Board. The DOE outsources the operation and management of its defense nuclear facilities to a select group of contractors and contractor consortia, and the vast majority of workers at these sites are contract employees.

In order to get the most accurate and timely information, the Board needs to be able to work directly with the contractors managing the facilities. Under this new order (p. 4), these contractors would be required to refer all requests for information from the DNFSB to a departmental site liaison to determine an appropriate response. The contractor would then be able to respond to the Board only when formally tasked by the site liaison. This is an unnecessary and impractical bureaucratic hurdle. The contract employees at these sites vastly outnumber the government employees, and are most often the individuals with direct knowledge of day-to-day

operations and of any problems that may arise. Government employees at these sites are often already overburdened with other contract-management issues. Furthermore, Board members have voiced concerns that this additional hoop to jump through could significantly impact their ability to provide relevant analysis of any matters that affect safety. This change seems to be nothing more than a solution in search of a problem.

By the time of the [August hearing](#), three months after the formal release of Order 140.1, the Board was already feeling the effects of the directive. DNFSB Technical Director Chris Roscetti provided a list of [four specific instances](#) in which the Board had not yet received information it had requested from the Department. These issues included everything from worker safety incidents to technical deliberations over redefining terms. “Although the order is not fully implemented, the staff has observed increased difficulties in obtaining information from the Department,” Roscetti stated at the hearing. “For several documents, we have observed protracted response times as the management and operating contractors consider their responsibilities to provide the requested information based on the language in the new order.”

This order (p. 4) also limits the Board’s access to deliberative or pre-decisional documents. Restricting the Board’s access to information until after decisions have been made makes its recommendations all but worthless. If the Board is only able to comment and provide recommendations on safety plans or procedures after they have been put in place, it will take significantly longer for the Department to implement them. At the hearing, Roscetti highlighted several areas where a lack of access to these documents would inhibit the Board’s ability to perform meaningful oversight. Of particular concern, according to Roscetti, is emergency response, as “information flow is highly dynamic, and often insufficiently vetted such that the Department could conceivably consider it pre-decisional.”

POGO is further concerned about the role contractor organizations may have played in the formulation of this order. At the August hearing, DNFSB members referenced a [2017 memo](#) from numerous DOE contractors requesting an evaluation of the Department’s manual for working with the Board “for revision and conversion into an Order,” indicating the entire process may have been undertaken at the request of the contractors, not the Department itself. In response to Board members’ questioning, DOE representatives confirmed that the team in charge of crafting the order did not formally incorporate any input from worker unions, the public, or even the Board itself. These contractors have long complained that the Department’s oversight practices are [overly burdensome](#). Requests for information and data can be time-consuming and may not always result in recommendations that support the contractor’s interests. This change in policy makes it easier for contractors to hide any details or information they might not want to come to light.

But DOE’s obligations are to the public, and the interests of its contractors should only be considered with an eye toward what is in the best interest of taxpayers. But time and again, government oversight groups, [including POGO](#), have found that the Department has been unwilling or unable to hold its contractors accountable. Congress created the DNFSB to provide additional accountability and review for issues that may affect the safety of the communities

around and within these nuclear sites. As the Department embarks on a [\\$1.2 trillion, 30-year plan](#) to modernize the nuclear weapons stockpile, it should not be curtailing safety oversight.

The Department should welcome the Board's involvement and participation in developing an interface guidance that facilitates that oversight, rather than restricting it. POGO strongly encourages the DOE to revise this order and work with the DNFSB to ensure the Board can continue to issue robust and meaningful safety recommendations.