



The Secretary of Energy
Washington, DC 20585

December 13, 2018

The Honorable Bruce Hamilton
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW, Suite 700
Washington, DC 20004

Dear Chairman Hamilton:

This is in response to your September 17, letter in which the Defense Nuclear Facilities Safety Board (DNFSB or Board) expressed its concerns regarding the testimony provided by the Deputy Secretary of Energy and others representing the Department of Energy (DOE) at the August 28, 2018, public hearing, on DOE Order 140.1, *Interface with the Defense Nuclear Facilities Safety Board*.

During the August 28, 2018, public hearing, the Deputy Secretary stated that “we [DOE and the DNFSB] mutually serve beneficial and essential functions, in that, the Board’s independent analysis, advice, and recommendations are vital to DOE ensuring adequate protection of public health and safety of the Department’s defense nuclear facilities and operations.” DOE’s longstanding policy is to continue a strong and productive relationship with the DNFSB and its staff as a valued external and independent reviewer.

The Deputy Secretary also stated that “when it comes to the safe operations of DOE sites and facilities, the buck stops squarely at our door, and we take full responsibility for that safety, for which Congress and the public holds us accountable, and rightfully so.” This statement clarifies that DOE, by law, has the responsibility and authority for ensuring the safety of our workers, the public, and the environment. The Board was not provided with such legal authority.

Contrary to your letter, DOE has and will continue to fulfill its obligations under the Atomic Energy Act (AEA), including its legal responsibility, authority, and commitment to carry out its mission in a safe, secure, and environmentally responsible way. DOE is dedicated to providing adequate protection of the public health and safety, protecting the health and safety of its workers, and is determined to accept full responsibility for any and all outcomes of its efforts, as the Deputy Secretary stated on August 28.

The Order does not diminish the Board’s legal authority, which is defined by Congress in 42 U.S.C §§ 2286 et seq. of the AEA. The Order also does not hinder DOE’s cooperation with the DNFSB or prevent the DNFSB from conducting its independent safety oversight mission to provide “independent analysis, advice and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of DOE in providing adequate protection of public health and safety.”



Your letter and its enclosure also raise concerns pertaining to certain language in DOE Order 140.1 regarding exemptions, public health and safety, determination of access, and pre-decisional deliberative information. Regarding DNFSB's assertion that "[e]xemptions included in the Order identify areas where federal and contractor personnel are not required to cooperate with the Board," the Order expressly states that the "Secretary of Energy" – "Ensures cooperation with the DNFSB in support of the DNFSB's enabling legislation." Regarding DOE's authority and responsibility to provide adequate protection of the public health and safety, as previously stated, DOE takes full responsibility for that safety, for which Congress and the public hold us accountable.

DOE Order 140.1 is consistent with the AEA, the legislative history of its enactment, and regulations and policies dating back to 1960 that differentiate between radiation exposures to "members of the public" and occupational exposures to "workers."

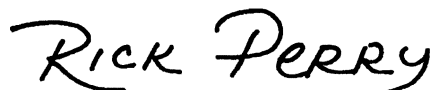
Your letter also referred to concerns over DOE's authority to deny access to information requested by the Board. The requirements to protect information, such as classified or Privacy Act information, are a core Departmental responsibility mandated by legislation and regulation, unrelated to development of DOE Order 140.1. However, information requested by the Board to conduct its defense nuclear facility mission responsibilities will continue to be provided in accordance with the law.

With respect to information under Department deliberation and/or at the pre-decisional stage, this information is consistently provided to the Board once a Departmental position has been reached. During the August 28, 2018, public hearing, DOE and the National Nuclear Security Administration senior leadership reiterated DOE's position of continuing to provide the Board access to information, facilities, and personnel to conduct its mission.

Of specific note, DOE disagrees with the characterization of the access to information issues raised by the Board at the August 28, 2018, public hearing. For each of these instances, DOE Order 140.1 did *not* prevent Board access to the information, and instead, DOE informed the DNFSB staff regarding the status of these matters, including the timing of *when* such information would be available for staff review. As you are aware, issues of this nature were a matter of discussion between DOE and Board well before development and issuance of DOE Order 140.1.

If you have any questions, please contact Mr. Matthew Moury, Associate Under Secretary for Environment, Health, Safety and Security' at (202) 586-5175.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style.

Rick Perry

cc: The Honorable James Inhofe
The Honorable Jack Reed
The Honorable Mac Thornberry
The Honorable Adam Smith
The Honorable Richard Shelby
The Honorable Patrick Leahy
The Honorable Rodney Frelinghuysen
The Honorable Nita Lowey