# Public Concerns and Information Access

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Dismantling warheads and managing the special nuclear materials from them pose **great** challenges to the United States and **to the** Government institutions that will be charged with a variety of complex tasks. A prerequisite for effective action is a recognition that conducting this work in the post-Cold War context is fundamentally different in terms of mission from warhead production during the arms race. Although some physical tasks may remain the same, they are now part of a new mission that involves permanent reduction of the nuclear weapons arsenal. A crucial component of this mission is the need to provide responsible stewardship of nuclear materials from dismantled warheads and to develop solutions for ultimate disposition of these materials in a safe manner that protects the environment and human health.

Although the world situation has changed dramatically, the institutional context in which nuclear weapons policies are developed remains largely as it was throughout the Cold War. Policy decisions are still being made within the old legislative, administrative, and cultural framework, and the United States has failed to develop a national consensus that could lead to a focused, new policy and provide the basis for a clear, new mission. The present institutional framework may not be appropriate to fulfill competently the responsibilities involved in the new mission.

Discussion and debate about the role of nuclear weapons in national security continue to be conducted in two largely separate and distinct arenas. One is dominated by members of the national security establishment-particularly those with access to classified information--who develop, evaluate, or implement national

**Point**

*"What would be gained from a public debate on the issue on the specifics of how the DOD determines which capabilities it will maintain in light of international trends and treaty obligations ?"*

**Pentagon reviewer of OTA report**

**Counterpoint**

*"Site by site, citizens will have to join together to force the DOE to change by saying that they will not entrust the next 40 years to the same regulatory and bureaucratic structure that created the last* 40 *years. "*

**Local citizen group reviewer of OTA report**

policy. The other is populated by outsiders, supporters, or critics of national policy (including the media and academia), who have opinions but very limited access to relevant information.

As described in chapter 2, decisions about the size and makeup of the nuclear weapons stockpile are made by a Nuclear Weapons Council composed of officials from the Departments of Energy (DOE) and Defense (DOD). Each year the Council prepares a stockpile memorandum that, when approved by the President, determines the amount and status of warheads for the next 6 years. Like most other matters concerning nuclear weapons and nuclear materials, these analyses and deliberations are conducted in secret and the results are disclosed only to those with appropriate security clearance. The total number of weapons in the current U.S. nuclear stockpile is classified, as are the numbers of warheads in either the active stockpile or the inactive reserve (10).

On the operational level, most decisions about U.S. warhead dismantlement plans and logistics are made jointly by DOD and DOE. Decisions about specific activities are made by each agency individually. Primary responsibility for producing nuclear warheads rests with DOE; warhead production programs are thus carried out apart from the military agency that is the customer for nuclear weapons—DOD. After they are assembled, DOD takes custody of warheads from DOE and retains them until they are retired; custody is then transferred back to DOE for dismantlement and the disposition of nuclear materials.

Some public interest groups are concerned that the decisionmaking process regarding nuclear weapons policies does not permit adequate and informed public debate on important national issues. The most fundamental matters involve the redefinition of international security in light of the changed world situation, and the role of nuclear weapons in preserving U.S. national security. Specific policy matters that are not being addressed publicly include: 1) the number of nondeployed nuclear warheads that the United States and Russia intend to retain as "backups" for the deployed warheads allowable under current agreements, 2) the number of warheads planned for retirement and dismantlement over the next two decades, 3) the amount of nuclear material from dismantled warheads, and 4) the ultimate disposition path for nuclear material that is deemed unnecessary for defense purposes.

Another concern often stated is that, because DOE has exclusive jurisdiction over all matters relating to special nuclear materials,[1] it is not subject to outside scrutiny in these matters (3). This arrangement distinguishes weapons-related activities from atomic energy activities in the civilian or commercial sector, which are overseen by the Nuclear Regulatory Commission and other appropriate agencies (3). Within DOE, nuclear weapons responsibilities are housed in the Office of the Assistant Secretary of Defense Programs (DP). The office, although part of a civilian agency, has a predominantly military mission. By law, responsibility for the production, storage, and accounting of special nuclear materials is carried out by a deputy assistant secretary for military applications from the military ranks (11). Other offices in DOE support defense program activities or are customers for the nuclear materials produced under its auspices,[2] and some national laboratories play an important role in all aspects of nuclear weapons research and development.

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1 Special nuclear materials are defined by the Atomic Energy Act as "plutonium, uranium enriched in the isotope 233 or in the isotope235, and any other material which the Commission. . . determines to be special nuclear material . , . but does not include source material" (42 U.S.C. 2014). The International Atomic Energy Agency defines "special fissionable material" as "plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine" (17).

2 For example, the office of Nuclear Energy (NE) often acts as a' 'customer' for materials produced by Defense Programs. NE conducts research and other activities with the materials.

## PUBLIC CONCERNS

Public interest groups, concerned about weapons dismantlement and the disposition of plutonium and highly enriched uranium (HEU) from dismantled warheads, want to participate in national decisions on this matter. They recognize that one of the key issues is whether these materials are considered a resource to exploit, as in power reactors, or a waste requiring disposal. Regarding plutonium, many believe that the costs and waste streams associated with its possible use in the U.S. nuclear energy industry would be prohibitive.

Regardless of the final outcome of this debate, public interest groups realize that an interim storage period will be required, and they are concerned about potential health and environmental threats from storage of these materials, especially plutonium. They are also concerned about possible international proliferation problems. Domestically, their concerns include: 1) the adequacy of plutonium interim storage containers to reasonably ensure health and human safety, 2) the insulation of interim storage sites from natural disasters or other scenarios that may endanger the surrounding area, and 3) the need for independent oversight of storage facilities and operations. Until such questions are answered, the public will remain unconvinced of the safety of DOE's interim storage plans.

A long and deeply ingrained distrust of DOE exists among public interest groups. This distrust stems primarily from the sense of frustration the public has from past experience in dealing with DOE on environmental issues. The concerns range from the responsiveness of DOE in meeting requests from the public for information, to a perception of disregard for public safety and environmental integrity in deference to production goals. These groups believe that, to some extent, DOE also distrusts the public, and that this is most likely the result of an institutional culture that has put a premium on security and secrecy. DOE, they feel, is simply not accustomed to operating and making policy decisions in an open and public reamer, which has had a negative impact on its relationship with some sectors of the U.S. public. The Office of Technology Assessment (OTA) informally surveyed public interest groups to determine recent experiences in obtaining information about DOE facility operations. A summary of results is shown in box 5-A.

Regardless of the sources or extent of the mutual distrust, it has manifested itself as a strong concern by the public over whether DOE-the agency responsible for creating the Nation's warheads-is the best institution for dismantling them as well. Most public interest groups near DOE sites affected by dismantlement see a need for greater public involvement in decisions affecting dismantlement operations. They strongly support the concept of including the public earlier and more actively in relevant decisionmaking processes. Despite recent efforts by DOE to respond to these views, public interest groups feel that effective and meaningful public involvement is not being achieved. In fact, the consensus is that negligible progress has been made toward a true engagement of the public and that DOE continues to ignore public concerns.

A recent performance evaluation of the operations and maintenance contractor at Pantex confirms this appraisal, noting a significant lack of management attention to public affairs. During the evaluation period, the contractor, Mason & Hanger-Silas Mason Co., Inc. (M&H), was supposed to demonstrate improvement in a proactive, public affairs and community relations program, including accurate and early identification of issues. M&H did not meet this criterion and expended little effort in the area, apparently giving it low priority. The evaluation (35) noted that the:

> Pantex Plant's role in downsizing the nuclear weapons stockpile has placed it in the world spotlight. Media, public and activist group interest continues to grow. This facility is slowly losing ground in terms of public acceptance and

the trend will continue at an ever increasing rate without a concerted effort to develop and implement a comprehensive public affairs program that continually seeks to present an accurate picture of Pantex Plant functions to the public.

Incidents highlighting credibility problems at Pantex are described in box 5-B.

## ■ Site-Specific Concerns

Activities at DOE Weapons Complex sites affect surrounding communities in a variety of ways. Historically, they have provided employment for large segments of the population in adjacent towns and cities. However, many believe that local economic benefits have come at the expense of a negative environmental legacy. Approximately 45 years of nuclear weapons production, with its associated materials fabrication and processing plants, reactors, and nonnuclear component needs, have caused widespread contamination that has led to considerable public concern about health and the environment.

Because of these integral links to communities that both support and depend on the Weapons

### Box 5-A-Public Participation and Access to Information

Weapons dismantlement activities will affect a variety of people who live in areas hosting DOE weapons facilities. As a result of the presence of these facilities, and the potential hazads associated with them, many local citizen groups have formed that seek to learn about, monitor, and participate in their planning and operations. Although specific concerns may vary depending on the site and its associated activity, in general, these groups seek to participate in t he decisionmaking process to ensure that adequate precautions are taken to protect public health, worker safety, and the integrity of the environment.

The efforts of these citizen groups have been impaired, however, by the information classification system, as well as by an ineffective public communications and inquiry structure and the lack of processes to meaningfully consider and respond to public concerns in DOE's decisionmaking, OTA informally surveyed a limited number of citizen groups about their experiences with information requests to DOE regarding environmental, safety, and health issues. The following responses characterize common problems.

. A fail 1992 request from a Hanford, Washington group about leach and leak testing, hydrogen generation, and sampling in a Hanford site grout program was responded to in a timely manner; however, "much information was withheld under 'predecisional' status. This has occurred several times with my Freedom of Information Act (FOIA) requests. DOE appears to circumvent the law by keeping documents in draft form for extended, unwarranted periods of time" (18).

. At the Savannah River Site, a group documented many requests for information related to plutonium operations at the facility, Some inquiries, initiated in 1990, are still pending final responses. The respondent indicated that "greater headquarters involvement in and control over DOE activities has created a bottleneck which often significantly delays the release of information" and "DOE relies heavily on FOIA exemptions, as well as classified and unclassified, controlled nuclear information labels. These mechanisms make it difficult to identify documents related to public concerns and create substantial delays in the release of information" (6).

• A group located near the Idaho National Engineering Laboratory (INEL) requested a large amount of information on radioactive and chemical releases from operations and accidents, as well as worker radiation exposure records. After submitting a FOIA request, the DOE review concluded that the group be charged $1,227,900 for fulfillment of the request. According to the group, "this figure has more to do with the line item budget requirements than with the actual costs involved." The perception is that "DOE has used every tactic imaginable to frustrate the release of information on INEL" (4).

- Differences have been reported in the timeliness and openness of DOE, depending on the office involved. For example, a Hanford group stated that "the staff of the Richland Field Office are more responsive than those at Headquarter s." Also, differences among *divisions* of DOE were reported: "It always takes longer with DP [defense programs] matters. EH and EM [Environment, Safety, and Health and Environmental Restoration and Waste Management,respectively] officials are almost always easier to deal with." The overall assessment was that "DOE does not assign sufficient resources to classification review" (31).
- Even when responses are timely, the information provided is often not directly related to the request, or is insufficient. In response to a FOIA request by a national group concerning a DOE work order, DOE sent " . . . a nearly blank page, except for one sentence at the bottom which read, in its entirety, '6. *Analysis of Public Issues* will include an analysis of public perception of health and safety risks, and perception of potential economic risks (e.g., contamination of local crops). The rest of the work order was never declassified, even in part." After pursuing the issue for more than 8 months, "DOE has provided . . . nothing" (27).

These anecdotes illustrate the feelings and perceptions of citizen groups about information accessibility y at DOE. Though by no means a comprehensive analysis or sample, they illustrate problems. Obviously, not every request for information is denied, ignored, or delayed. However, the security environment in which DOE is legally bound to operate, and the dosed nature of many operations, too often hamper legitimate efforts of the public to educate t hemselves about operations at DOE facilities. Whether intended or not, the effect is t hat public confidence is eroded. The new Administration has told citizen groups it will give a high priority to solving these problems.

SOURCE: Office of Technology Assessment, 1993.

Complex, many public organizations have been formed that seek to address the environmental and health issues associated with these sites. Some groups are now also addressing the environmental impacts of new warhead dismantlement and materials management activities.

Virtually all public interest groups concerned with nuclear weapons issues, and dismantlement specifically, share common concerns about DOE's competence, the public's access to relevant information, and effective citizen involvement in national decisionmaking. Although usually organized in response to concerns about a local site, these groups also recognize and engage the national scope and international implications of Weapons Complex issues. However, in addition to common concerns about DOE's operations, public interest groups have problems specific to the key dismantlement sites: Pantex, the Y-12 Plant, and the Savannah River Site.

### PANTEX

Several public groups are involved with, and concerned about, activities at Pantex. PANAL, Panhandle Area Neighbors and Landowners, is a group of Pantex area residents who organized when Pantex's mission changed to one of disassembly and storage. The Peace Farm-an area adjacent to the facility-serves as a community for arms control and disarmament advocates. Serious Texans Against Nuclear Dumping (STAND) was initially formed in opposition to siting a nuclear waste repository in Texas (29). Pantex activities, especially relative to dismantlement, are now the main concern of STAND. The Texas Nuclear Waste Task Force is a coalition of groups with various agendas that was formed to resist the siting of a high-level nuclear waste repository in Texas. All these groups have joined to form STAR, the State of Texas Alliance for Resources, to address concerns that they share about Pantex (14).

The group that has made Pantex dismantlement and storage programs the center of its activities is

BEVERLY GATTIS


*Local citizens living near the Pantex Plant setup an information booth during DOE hearings on Environmental Impact Assessment.*

STAND. STAND's current efforts focus on stopping the open burning of chemical explosives and stopping Pantex from becoming the long-term storage site for plutonium pits. STAND and others believe that open burning of explosives may represent a public health threat. Of particular concern is fluoride deposition in soil in the immediate area, which serves cattle grazing and other agricultural uses. The future plutonium pit storage issue is particularly worrisome to STAND because Pantex is already storing large numbers of pits. DOE is now planning to increase pit storage capacity in Pantex bunkers (see appendix A). Some in the local community are concerned that this will increase radioactivity within the storage area and, thus, increase worker safety risks. STAND, as well as the Texas Attorney General, is also concerned that no plans are being made to designate an alternative site for pit storage, which indicates that a decision to use Pantex for a more extended time may occur by default. Other concerns of the public interest groups around Pantex include the impact of increased waste streams from heightened disassembly activity, the potential contamination of a large groundwater aquifer in the region, and worker safety.

### Y-12 AT OAK RIDGE

**The** primary public interest group associated with the Y-12 site is the Oak Ridge Environmental Peace Alliance (OREPA). The Alliance acts as a public educator about activities at the Oak Ridge Reservation as well as an advocate for changes in many aspects of DOE's operations there (22). Regarding dismantlement programs, the Alliance is concerned mainly with the new waste streams occurring at Oak Ridge, particularly at the Y-12 Plant. Issues of storage capacity and safety, proper treatment of components classified as waste, and long-term disposition of uranium from warheads are top priorities. The group is urging DOE to prepare an Environmental Impact Statement (EIS) for dismantlement activities at Y-12, or at least have a section of DOE's Programmatic EIS for reconfiguration devoted to these issues. The waste stream concern is particularly acute since the site is already listed on the Superfund National Priorities List for cleanup.

OREPA also sees its role as that of a "conscience' for DOE. As dismantlement progresses, the group will attempt to verify what information DOE releases, assess its accuracy, and prod DOE into maintaining a dialogue with the public. This latter goal derives from distrust of DOE among local residents, in light of recent revelations about mercury contamination at the Oak Ridge site. In 1983, it was reported that more than 2 million pounds of mercury had been released to the environment during Oak Ridge operations in the 1960s (22). This incident is one of many that have generated widespread distrust of DOE by the public and have led to the conviction of public interest groups that they must act as oversight bodies.

Another OREPA concern is DOE's lack of a formal plan for the role of Y-12 in its dismantlement program. The group is concerned that Y-12 may become a de facto storage site for hundreds of tons of highly enriched uranium. OREPA wants to avoid this and seeks to engage DOE, the State of Tennessee, and other relevant agencies in

### Box 5-B-Credibility Problems at Pantex

In July 1992, a Texas Water Commission official accidentally discovered, when determining whether classified hazardous waste had been stored in a bunker marked for pit storage, that the plutonium pits were stored in a different configuration than Pantex has consistently represented to the State (23). Instead of drums in rows arranged along the sides of the bunker, the pits had also been placed in the middle. The specified 4-foot aisle access space, emphasized by Pantex officials as a protective measure for workers during monitoring and inventorying operations, was lacking, and the Pantex official entering the bunker had to walk sideways. The Pantex official claimed that the represented configuration was typical and the particular bunker was experimental. Three workers entering the bunker did not put on any protective clothing, even though they seemed to know it was required. The observed configuration did not appear optimum for worker safety. Moreover, Pantex officials appeared uncertain about the actual number of pits stored in each bunker (23). The varied explanations given by Pantex for the aberrant configuration do not inspire confidence and appear to be after-the-fact justifications (13).

in April 1992, radioactivity was detected at the high-explosive burning grounds. DOE apparently conducted an internal investigation but failed to notify the State. The State found out indirectly, several months later, from a citizen who had heard it secondhand from a Pantex worker. Since the State was not informed of the incident when it occurred, it was not given the opportunity to participate in the subsequent investigation. The State-DOE relationship is not enhanced when an incident occurs and State and local officials find out about it months later from concerned citizens or the local newspaper (13).

SOURCE: Offioe of Technology Assessment, 1993.

dialogue with the public in an open decision- and policymaking process,

#### SAVANNAH RIVER SITE

The Energy Research Foundation (ERF), located in Columbia, South Carolina, is the lead public interest group associated with the Savannah River Site. ERF also addresses nationwide Weapons Complex issues (6).

Public concerns about dismantlement programs at Savannah River include potential plutonium storage and the storage of tritium canisters. Although current plans do not call for pit storage at the site, the option has been discussed (plutonium from past production operations is currently stored there). Tritium canisters, which are fabricated at Savannah River, are being returned and stored there as warheads are dismantled. ERF has concerns about ongoing tritium recycling activities that have, in the past, released tritium directly into the environment and generated tritium-contaminated waste. Finally, the group wishes to participate in decisions that may flow from current study proposals to build reactors or other facilities at the Savannah River Site for plutonium disposition.

## National Public Interest Group Concerns

In addition to the site-specific organizations described above, a range of national interest groups also are concerned with dismantlement issues. Two of the groups, the Military Production Network and the Plutonium Challenge, are coalitions of national environmental organizations and locally based citizen groups. Another national group concerned with dismantlement issues is the Natural Resources Defense Council (NRDC).

The Military Production Network (MPN), with an office and full-time representative in Washington, DC, describes itself as an alliance of 41 grassroots and national organizations that addresses issues of nuclear weapons production and waste cleanup. Given the change in mission of many of DOE's weapons sites, MPN has also turned its attention to issues associated with dismantlement. STAND and OREPA are mem-

bers of MPN, and ERF is listed as a "friend" of MPN (19).

MPN seeks to influence national policy by working with Congress, the Administration, and specifically, regulatory agencies and DOE on a range of issues. MPN has issued a formal position on dismantlement, which calls for DOE to make public all plans and information regarding storage of plutonium and highly enriched uranium from warhead dismantlement, as well as the use of plutonium as reactor fuel or decisions on its final disposition. MPN opposes the disposal of transuranic and mixed transuranic wastes at the Waste Isolation Pilot Plant, and calls for more public involvement and environmental sensitivity in the DOE decisionmaking process.

The Plutonium Challenge, organized in 1986, began as a coalition of arms control and environmental groups that supported a ban on the production of weapons-grade plutonium. Recently, it has widened its agenda and addresses several issues concerning the Weapons Complex and nuclear arms. The coalition meets each week to develop legislative strategies aimed at congressional action. The Plutonium Challenge intentionally limits its focus to a few key issues, and dismantlement is currently not a priority. Although the coalition has not issued or announced a formal stance on dismantlement, it monitors events and considers the impacts of weapons dismantlement on its overall agenda (9).

The Natural Resources Defense Council, founded in 1970, is a public interest group composed of a staff of attorneys, scientists, engineers, and public policy specialists with expertise in environmental, energy and resources, economic, and proliferation and disarmament issues. NRDC works on a wide variety of issues in these fields, and has initiated efforts to address warhead dismantlement and nuclear materials disposition as well (5).

NRDC has long focused on nuclear weapons policy and planning, and is considered an authority on the history and processes related to nuclear weapons production. Its *Nuclear Weapons Data-*


ROBERT DEL TREDICI

*Citizen activists from the United States and Russia meet at the DOE Savannah River Site.*

*books are* widely recognized as the authoritative information source for nuclear weapons issues. Recently, NRDC, in cooperation with the Federation of American Scientists, has hosted a series of international workshops on dismantlement. These meetings highlighted a number of issues that were later pursued in negotiations with former Soviet officials by U.S. Government agencies.

One of NRDC's chief interests within dismantlement policy is that a system of verification and information exchange between the United States and the former Soviet Union be developed to address the risks of fissile materials proliferation. The long-term disposition of special nuclear materials from dismantlement is also a primary concern of NRDC. Like the local groups, NRDC places a premium on the openness of, and public involvement in, the nuclear weapons dismantlement decisionmaking process.

## INFORMATION ACCESS

To control the dissemination of information that could threaten national security, certain restrictions on access to "atomic energy" information have been established. Certain information and data regarding nuclear weapons activities must be protected to prevent the proliferation of nuclear weapons, as well as terrorist threats such

as the theft of special nuclear materials or weapons, the diversion of these nuclear materials, or sabotage of nuclear weapons facilities.[3] These restrictions were established in the Atomic Energy Act (AEA) (42 U.S.C. section 2011-2296 (1982 and Supp. IV 1986)) and its amendments, as well as in the security classification systems subsequently developed by DOE and DOD. Both agencies carry out their respective nuclear weapons missions under complicated systems of information classification and security. These systems are based on a comprehensive set of laws, Executive orders, and internal rules and orders.

The primary legal foundation for DOE's information classification and security system is the Atomic Energy Act of 1954, as amended (3). The act defines Federal agencies' obligations with respect to controlling information related to atomic energy defense programs. DOE also works with "National Security Information," which is regulated under an Executive order; however, atomic energy information is controlled exclusively by the act (12).

Under the AEA, a broad scope of information related to atomic weapons and processes involving special nuclear materials is categorized as "Restricted Data"[4] and deemed classified from the moment it is produced (i.e., it is "born classified" (16). This condition is unique to nuclear information under the control of DOE. Such data may be declassified only by a positive action of DOE. In the case of information that has been removed from the Restricted Data category and placed under joint control of DOE and DOD ("Formerly Restricted Data," related primarily to the military utilization of atomic energy), a decision to declassified must be made jointly by the two agencies. DOE also issues its own orders delineating procedures and guidelines for handling information classification and security.[5]

Restricted Data, once produced, remain classified indefinitely. That is, there is no expiration date beyond which such information becomes unclassified. The Atomic Energy Act does, however, mandate that classified information be continuously reviewed and declassified when conditions merit (3).

DOE has no office or formal organization that deals exclusively with declassification,[6] but it does have a process for declassification of Restricted and Formerly Restricted Data (34). The Office of Classification within the Office of Security Affairs issues biennial calls for declassification proposals from DOE programs, field and operations offices, and contractors. (Since 1990, the Office of Classification has issued two biennial calls.) The Office of Classification then reviews the proposals to determine whether the requesting office has adequately justified the action.[7] Many criteria are used to judge whether classified information may be declassified, including:

> the extent to which the information would assist in the production of special nuclear material, . . . the benefit to be realized by the U.S. program from the declassification action ... , [and] "the cost to the U.S. program by the continued classification of the information (34).

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[3] For a thorough description of why information requires classification protection, see reference 25.

[4] "The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization Of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title" (42 U.S.C. section 2014(y)).

[5] DOE Order Series 5600 provides guidelines for DOE personnel working with classified or controlled information.

[6] The Office of Classification within the Office of Security Affairs, which is part of the Office of Intelligence and National Security, is the organizational element with responsibility for classification, declassification and Unclassified Controlled Nuclear Information.

[7] The biennial call declassification process is the normal procedure for declassification actions. However, departmental elements may submit requests for declassification reviews at any time.

A schedule for accomplishment of the review process is also set by the Office of Classification.

The recommended declassification actions are then distributed to all offices and organizations involved and, if appropriate, to the Department of State and the Arms Control and Disarmament Agency for input on proliferation concerns. Comments from these reviewers, as well as the Office of Classification, are then forwarded to a Technical Evaluation Panel, which reviews the proposals and recommends either for or against the requested action. The panel consists of three nuclear weapons experts, one from each of the weapons laboratories: Sandia, Lawrence Livermore, and Los Alamos (15). The recommendations of the Technical Evaluation Panel are then forwarded to the Office of Security Affairs for approval or disapproval. Approved declassification actions are implemented through internal DOE bulletins or revisions to classification guidelines (34).

Although the Office of Classification is the organization with authority over classification, declassification, and unclassified but controlled information within DOE, it is not the only departmental element with influence on classification *policy.* Most of the classified information or material within DOE is "owned" by Defense Programs, which exercises a degree of control over all declassification decisions (37).

In addition to classified information, DOE has special procedures for information that is not classified but is judged to be sensitive. ' Several categories of unclassified, yet limited-use, information exist. The most important category with regard to weapons dismantlement is ' 'Unclassified, Controlled Nuclear Information" (UCNI), which is related to nuclear activities and was promulgated in regulations required by the Atomic Energy Act. The AEA prohibits unauthorized dissemination of UCNI, and regulations (10 CFR 1017) specify the legal conditions for dealing with such information.[8] Generally, UCNI is not available to the public unless one requests, and justifies, 'special access' under the provisions of the law.

The need for the UCNI category has been questioned by some (1,20,40). Given the sweeping nature of AEA's information classification authority, as well as other governmental provisions for information security, UCNI has been criticized as redundant and unnecessary for the adequate protection of information on atomic energy defense programs. A key difference between UCNI and most other classified DOE information is that data are categorized as UCNI after a judgment is made by DOE, rather than as a presumptive condition of the material (as with Restricted Data).

In one case, a document was categorized UCNI and, after heightened interest and inquiries from citizens and public interest groups, released to the public in a ''sanitized" form.[9] Apparently, the sanitized version differed from the UCNI document very slightly, which indicated that, with minimal effort, a version could have been made publicly available at the same time the DOE version was completed. Had this occurred, DOE could have made progress in establishing positive communication and openness with the public, and improved the level of trust and credibility with the public. However, the need for continued inquiry and pressure from citizens and public groups frustrates the process and damages the image of DOE.

DOE also handles information classified under security provisions other than the AEA. The legal basis for other than Restricted Data and Formerly Restricted Data categories is Executive Order 12356, issued by President Reagan in 1982 (12). Executive Order 12356 governs the classification of "National Security Information. " National

[8] DOE Orders 5635.4 and 5650 describe agency procedures for identifying and protecting UCNI.

[9] The document in this case was a Safety Analysis Report conducted to analyze risks and conditions associated with increased storage of plutonium pits at the Pantex facility.

Security Information differs significantly from Restricted Data and Formerly Restricted Data in that it requires a positive action by an agency or authorized official to classify something. National Security Information is defined by Executive Order 12356 as falling into 10 categories, including:

> (1) military plans, weapons, or operations; (2) the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security; . . . or (7) United States Government programs for safeguarding nuclear materials or facilities.

Thus, it is clear that Executive Order 12356 can also apply to DOE Weapons Complex activities and operations (but not to atomic energy information encompassed by the Atomic Energy Act).

President Clinton has recently directed a comprehensive review of the National Security Information classification system that will culminate in the preparation of a new Executive order to replace Executive Order 12356. The Review Directive states that:

> [W]e should re-evaluate our security classification and safeguarding systems. . . to ensure that they are in line with the reality of the current, rather than the past, threat potential (24).

The Directive outlines specific questions to be addressed as part of the review, including: What steps can be taken to avoid excessive classification? What steps can be taken to declassify information as quickly as possible? It is important to distinguish, however, that the Presidential Review Directive addresses National Security Information and not Restricted Data (which is regulated by statute). Thus, the status of information such as nuclear materials stockpile amounts and numbers of weapons in the stockpile or slated for retirement and dismantlement will not change as a result of the review.

Besides the legal foundation that restricts access to information, the limited infrastructure and resources devoted to information classification and declassification at DOE hamper effective and timely response to public information requests. Responses to requests for information are often slow and insufficient. Information and documents that are disseminated are too often released only after great time and effort have been expended by the requester. Even when the final action is a denial due to classification of the information, it is not uncommon for DOE to take months, or sometimes years, to respond to a request (6,18,26,27).

Undoubtedly, a large part of this problem is due to the constraints under which the Office of Classification operates with respect to financial and human resources. The Office of Classification has been level-funded since 1980, and recently experienced a significant reduction of funding in relation to its total budget. These cuts have had a particularly adverse impact on its ability to respond to Freedom of Information Act (FOIA) (Public Law 89-487) requests.[10] Although mechanisms do exist for the routine review of classified material, and its subsequent declassification if deemed necessary, they are overloaded.11

The statutory and practical restrictions on information access also affect the accessibility to the public of the Defense Nuclear Facilities Safety Board (DNFSB), which has the authority

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10 The Freedom of Information Act, which allows citizens to request access to government information not generally made available, and to challenge the withholding of information, has an exemption for ' 'properly classified'' material. Although FOIA places the burden on the "owner" agency to justify the denial of access to information or documents, all properly classified material is exempt from provisions of the act. FOIA requests are sometimes responded to by releasing an unclassified version of the restricted material, complete with blacked-out sections of text or charts.

11 In 1992, the Office of Classification reviewed approximately 150,000 classified documents categorized as environmental, health, and safety information. The number of people engaged in and authorized for review activities is approximately 100 (37). In contrast, more than 5,000 people agency-wide have some type of classification authority (30).

to oversee nuclear weapons facility activities and advise DOE about improving the safety of those activities. Citizens have found that many documents generated by the Board are categorized by DOE as UCNI (which are available only after they have been "sanitized"). Others are difficult to get, often requiring a FOIA request. The Board also keeps a restricted database to which the public does not have access (7). In 1990, a lawsuit was filed against the Board that ''challenged the Board's position that it was not an 'agency' for purposes of the Sunshine Act and the Freedom of Information Act" (36). A Circuit Court of Appeals ruled that the Board must be considered an "agency" and must therefore develop rules for complying with the acts. However, the Board was allowed to hold closed meetings on recommendations regarding safety and health at DOE defense nuclear facilities since its enabling statute includes language interpreted by the Court to allow this (36).

In addition to affecting public access to information such as numbers of nuclear weapons and materials, security limitations hinder access to information about the environmental, safety, and health aspects of activities at DOD facilities that house nuclear weapons; at DOE's Nuclear Weapons Complex; and with respect to the transportation of nuclear weapons and materials. Recent investigations suggest that the process for implementing nuclear weapons policies-which has historically given priority to national security considerations, at the cost of neglecting the protection of human health and safety, and the preservation of the environment-has not greatly improved (2,21,28,32,38).

National public interest groups and citizens near certain Weapons Complex sites are complaining that current rules restrict their access to environmental, health, and safety data that have little to do with national security. At the local level, the failure to disclose such data has contributed to a lack of trust of Federal agencies and has promoted an adversarial relationship between DOE and its contractors on the one hand, and States, community groups, or other interested parties on the other. There are concerns that it may also allow the environment, health, and safety to continue to be relegated to a low operational priority in Weapons Complex activities.

Recently, the Office of Classification has undertaken initiatives to address the issues and problems described (see box 5-C). A draft Classification Policy Study was completed that made several recommendations aimed at modifying the classification environment to adapt to new international security conditions. Also, a department-wide environmental, safety, and health initiative included a directive to review such information and to prepare future environmental, safety, and health documents with "an eye toward public release" (33).

In sum, DOE now has discretion to limit access to a broad range of information relevant to weapons dismantlement and nuclear materials management. As a result, the public's ability to acquire adequate and timely information regarding environmental, safety, and health issues related to these activities is greatly impaired. Information that citizens consider essential to discussions of safety and health is often inaccessible to interested persons outside DOE because it is classified or otherwise tightly controlled. Citizens frustrated by lack of access to information are not likely to trust the agency or support its plans and programs (39). Yet such trust and support are critical if warhead dismantlement and materials disposition programs are to gain needed public acceptance.

## APPROACHES FOR INSTITUTIONAL CHANGES

If progress is to be made toward warhead dismantlement and sound materials disposition, it will be necessary to move from the present situation of scattered ideas and initiatives to a new approach of developing broadly acceptable goals and objectives on which to carry out focused solutions and attain desired results. A major

### Box 5-C-Recent Initiatives Regarding Information Access

President Clinton, as well as the Department of Energy, has recognized the need for modifying the system under which government information is classified and controlled. Greater public interest and concern about the Nation's defense programs (including nuclear operations) domestically, as well as fundamental changes in the international security environment, have pointed out the need for a reevaluation of the system and goals under which information is classified. DOE has undertaken initiatives to respond to these needs.

DOE Office of Classification. A Classification Policy Study was completed in fiscal year 1992 and is currently in draft form. Its recommendations included the following:

. Redefine restricted data to reflect changes in the security environment, as well as respond to the current state of published information. This recommendation would require amending the Atomic Energy Act.
. Provide authority for the Secretary of Energy to communicate Restricted Data to other countries. Currently, other nations may release information that is, by U.S. standards, Restricted Data and thus may unwittingly aid proliferants.
. Eliminate the Formerly Restricted Data Category. information removed from the Restricted Data Category could be protected adequately as National Security information.
● Allow the authority to reclassify some areas of information. The study found that mandatory declassification of entire areas of information may be too comprehensive. Technological breakthroughs in areas such as special nuclear materials production ought to be classified, for example, but current enrichment techniques should be released.
. Define the scope of Unclassified, Controlled Nuclear information more precisely.
. Conduct a comprehensive review of all nuclear weapons information, with the objective of removing all information no longer needed to be classified.

DOE Environment, Safety, and Health initiative. As part of the Secretary of Energy's Safety and Health Initiative (May 1993), DOE was directed to "begin review of Departmental classification procedures and information polices governing public release of documents pertaining to environment, safety and health matters" (33). The review is being directed jointly bythe Director of the Office of intelligence and National Security and the Assistant Secretary for Environment, Safety, and Health. Furthermore, the Secretary directed that "all environment, safety and health documents of the Department of Energy will be prepared with an eye to public release" (33).

SOURCE: U.S. Department of Energy, 1993.

challenge for the Federal Government as a whole, and the specific agencies engaged in these tasks, is to undertake and manage this new post-Cold War mission in a reamer that is competent, responsible, and credible. To achieve successful warhead dismantlement and materials management policies and programs in the United States, the Government will need to establish clear policies and well-defined objectives appropriate to present conditions.

The institutions responsible for these tasks must be made equal to the challenge. The Nation will need to establish an institutional structure dedicated to excellence and openness, and to make protection of the environment, safety, and health a working priority in both dismantlement and materials management activities. In addition to a new openness in making and carrying out decisions, effective warhead dismantlement and materials management will require consistent and enduring talent, dedication, and astute management—qualities that government agencies often find difficult to sustain without adequate leadership and vision. Programs and plans will need to be

developed through a process that has broad public acceptance, as well as the flexibility to adapt to changing technical and political parameters over the long period during which nuclear materials must be managed.

However, OTA's analyses show that U.S. dismantlement and materials management efforts have lacked focus, direction, and coordination. There has been little informed discussion at high levels of government in terms of planning for the ultimate disposition of special nuclear materials from warheads.

OTA has concluded that the institutions involved in attaining these objectives must meet the following criteria: a management process and culture that give priority to protecting the environment and human health, and promoting safety; internal accountability and external independent regulation or oversight; a mechanism for making information accessible rather than restricted; and a management philosophy of openness, fairness, and public involvement in decisionmaking.

The traditional limitations on access to information about nuclear matters have prevented environmental, health, and safety data from being released and discussed publicly. Lack of relevant information about these factors has heightened public concerns, destroyed public trust and confidence, and increased public opposition to proposed agency actions. If the dismantlement and materials disposition activities are to gain public acceptance, it will be necessary to modify existing limitations on information access and to make data relevant to these aspects of nuclear warhead dismantlement and nuclear materials management easily available to interested citizens.

Further, the ongoing activities and plans with respect to weapons dismantlement and materials management are being conducted without meaningful public involvement. Yet experience from other major nuclear materials management programs-such as the attempt to site repositories for high-level commercial spent fuel, defense transuranic waste, and low-level waste-has shown that when the public, the States, and other affected parties are not effectively included at all stages of relevant deliberations and decisions, proposals by Government agencies are inevitably delayed or derailed. An open, consensus-building process that allows all relevant views to be heard before decisions are made on environmental, health, and safety matters would appear to be essential if key issues (e.g., whether materials from weapons should be used for commercial purposes, whereto site nuclear materials storage and processing facilities) are to be resolved with satisfactory and publicly acceptable results.

## CONCLUSION

Policies developed entirely behind closed doors are unlikely to achieve public acceptance, particularly decisions that involve significant amounts of Government spending. Public support is necessary for these types of policies to succeed, and public understanding of the issues is a prerequisite for support. Policy development in these areas will depend on the definition of international security in this post-Cold War era—a definition that will inevitably involve not only the role of nuclear weapons but also other concerns relevant to changing conditions. To meet these conditions, anew definition should include broader concepts such as protection of the environment, human health, and safety in a nonmilitary context. For effective policy development, information access will have to be enhanced and participants in the debate will have to come from more sectors of government and society than in the past.

Not only will experts and policymakers at the Departments of Defense, State, and Energy, and the rest of the national security and disarmament communities have to be involved, but the discussion must also bring in the views of those who, in a broader context, have knowledge, authority, and specific interests in protecting human health and safety and preserving the environment. Little will be accomplished unless an informed Nation agrees to pursue common goals regarding nuclear warhead dismantlement, and nuclear materials

management and disposition, that preserve the environment, health, and safety.

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