

## **DNFSB Finding – Employee Concerns**

- The investigative record shows that the DOE Office of River Protection Employee Concerns program is not effective. One safety expert explicitly testified that employees would not and did not use the program, and believed that individuals running the program would "bury issues" brought to them. The record shows that in the removal of Dr. Tamosaitis, Human Resources (HR) for URS was interested only in implementing management's demand that the employee be removed immediately. The record shows HR did not assert any consideration or concern regarding the effect the process and manner of his removal would have on the remaining workforce and the effectiveness of the contractor employee protection program required under 10 CFR Part 708.

DNFSB Report, June 2011, p. 4

### **Finding Two: DOE and Contractor Management Suppress Technical Dissent**

- The HSS review of the safety culture on the WTP project "indicates that BNI has established and implemented generally effective, formal processes for identifying, documenting, and resolving nuclear safety, quality, and technical concerns and issues raised by employees and for managing complex technical issues." However, the Board finds that these processes are infrequently used, not universally trusted by the WTP project staff, vulnerable to pressures caused by budget or schedule, and are therefore not effective. Previous independent reviews, contractor surveys, investigations, and other efforts by DOE and contractors demonstrate repeated, continuing identification of the same safety culture deficiencies without effective resolution. p. 4

## **DOE HSS Report – excerpts on ECP BNI Employee Concerns Program**

### **Enforcement and Oversight**

While the investigations that were conducted were generally thorough, in a number of the ECP case files reviewed, the investigations were not sufficiently comprehensive. For example, a BNI ECP case that identified peripheral safety issues was closed based on an e-mail from the superintendent stating that he had talked with his foremen, heard that they were unaware of any problems, and told them he expected procedures to be followed. These actions were insufficient to definitively establish whether the expressed concerns were accurate or to identify the extent of condition. The failure to address all aspects of the case or to fully address emergent issues can damage the credibility of the program with concerned individuals, who may conclude that the ECP process is ineffective or biased. Also, formal BNI ECP communications of resolutions to the concerned individuals did not address any recourse for the concerned individual if he/she did not agree with the resolution; the ECP manager took action to improve this situation during this Independent Oversight assessment by changing the standard template for responses.

### **Differing Professional Opinion Program**

Two DPO cases have been filed since the 2010 HSS review. Both were decided in favor of the initiator. The investigations and case files were generally well documented and involved independent personnel with nuclear safety qualification and experience who evaluated the facts of the competing positions and made appropriate recommendations for resolution.

A procedure describes the DPO process expectations. However, deficiencies in the DPO procedure and the implementation of the process were identified. For example, the revised procedure does not describe, in the text or the process flow chart, the documentation and management of any issues and associated corrective actions or recurrence controls resulting from the DPO resolution (i.e., document and manage as a PIER). Also, deficiencies in the application of the DPO process included providing insufficient analysis of the reasons why prior issue resolution methods were ineffective in resolving the issue, documenting corrective actions in the wrong system (a commitment tracking system rather than the PIER system), and incorrectly categorizing corrective actions in the PIER system (resulting in a lower priority than warranted and thus obviating requirements for analysis of causal factors).

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## Appendix

Some interviewees indicated a fear of retaliation if they were to use the ECP. They perceive that it is not anonymous and that information is shared without their permission. P. 22

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ORP personnel have originated only two employee concerns since October 2010. Most of the concerns since the 2010 HSS review were received from personnel in contractor organizations, with 52 cases in fiscal year (FY) 2011 and 3 so far in FY 2012. Because the combined program is new, no self-assessment has been conducted by the ECP Program Manager.

The Independent Oversight team reviewed about 20 RL ECP case files – both open and closed. Most RL investigations were thorough and well documented, and findings were issued when appropriate. In a few cases, the documentation did not fully address the specific concerns or provide a complete basis for closure, and some non-compliances related to employee concerns were not fully resolved in a timely manner through contractor corrective action programs. An example of this problem involved an anonymous concern case referred from the DOE Inspector General (IG), relating to black cell (inaccessible areas after initial waste processing) tank welding records, that was investigated by ORP. The case file did not contain some related closure information and the case was prematurely closed as unsubstantiated, although a surveillance performed by the ORP Construction Oversight and Assurance Division staff documented that no weld records or weld maps were on site for one nozzle weld in a vessel from one of five tank vendors reviewed. The surveillance report was not included in the file. In addition, ORP staff requested the IG to solicit further information from the concerned individual, if possible. The file contained no evidence of any response from the IG or the individual, or any notation of the resolution or failure to resolve the questions. The Independent Oversight team's discussions with ORP staff revealed that the IG continued to conduct its investigation, supported by additional surveillances by ORP staff, that identified inadequate BNI investigations of the weld records issues. The IG and ORP investigation efforts finally resulted in BNI generating a Level B Project Issue Evaluation Report (PIER) and BNI's conduct of a 100 percent review of weld records for black cell and "hard to reach" vessels. The four PIERs written to address these issues were all initially designated as Level C, even though the stated actions included determining the extent of condition, which should have resulted in a Level B categorization as defined in GPP-MGT-043. The last PIER, issued in September 2011, identified a number of missing records and stated that the PIER was written to investigate the potential for similar conditions in other packages and determine the need for recurrence controls, again warranting designation and management as a Level B. This PIER was upgraded to Level B only after discussions with ORP. None of these facts were included in the closed case file.

Another 2010 case involved employee concerns about the corrective action program of the Tank Farm

contractor, Washington River Protection Solutions (WRPS), specifically the generation and resolution of Problem Evaluation Requests (PERs). WRPS personnel are involved in coordinating the transition to operations and the interface between the Tank Farm (from which the waste material will be pumped) and the WTP. The RL ECP investigation concluded that PERs were not being issued for non-compliances as required. ORP conducted surveillances in support of the ECP investigation and issued formal findings to WRPS for some of the concerns that had been substantiated, but no finding was issued for the failure to issue PERs. Further, subsequent employee concerns related to improper issues management by WRPS have been filed with RL, indicating that this problem has persisted. Issues with WRPS management of issues were also the subject of a finding in ORP assessment 10-ESQ-148 in 2010, which identified that most of the Radiation Control personnel who were interviewed did not routinely write PERs for conduct of radiological operations issues at the Tank Farm. WRPS subsequently developed a PER improvement program. There is no evidence that ORP performed further reviews to ensure that corrective actions for ECP issues were thorough and effective. WRPS performance was not a part of this HSS review; however, because of the continuing nature and the safety culture implications of this PER issue, further review by ORP is warranted.

In some cases where issues were referred to the contractor's organization for follow-up, the basis for referral was not clear. Further, ORP concurrence for referral was routinely obtained informally, and there are no procedural requirements for a formal concurrence. The ECP procedure definitions section references the referral of concerns but does not provide adequate guidance to ensure confidentiality. The ECP procedure does not provide for a first-step factual accuracy validation with the originator to ensure that concerns are appropriately addressed, particularly for referrals. Some cases had been validated, and some had not. The RL ECP retains responsibility for final closeout in all cases.

The DPO process has been incorporated into the RL Employee Concerns procedure, DOE-RL-RIMS-HRECP, *Employee Concerns Program*, and is referenced in recently revised ORP procedures. The process meets the requirements of DOE Order 442.2, *Differing Professional Opinions on Technical Issues Related to Environment Safety and Health Technical Concerns*, except that it does not provide for appeal of ORP decisions to DOE Headquarters. The requirement for an appeal process became effective in July 2011, when DOE Order 442.2 replaced previous directives (DOE Policy 442.1A and DOE Manual 442.1- that did not include this requirement.

One DPO was filed during the past year. This DPO, which involved concerns regarding the mixing of non-Newtonian fluid waste in the Pre-Treatment Facility (PTF), was filed in April 2011 and was processed in accordance with the RL procedure. The RL DPO procedure does not include timeliness limits or guidelines, and this DPO was not processed in a timely manner, in part because of the time required to procure a DPO panel and chairperson. DOE management had not made a final decision on this DPO at the time of this HSS review (November 2011).

ORP has established an adequate FEOSH program, which includes provisions for Federal workers to raise safety concerns. The FEOSH implementing procedure is shared by RL and ORP and is maintained by RL. The program procedure, *Federal Employee Occupational Safety and Health (FEOSH), Hanford's Program*, is consistent with DOE Order 440.1B, *Worker Protection Program for DOE Federal Employees*. The FEOSH Committee has an appropriate charter and meets quarterly. One initiative was the establishment of suggestion boxes strategically located where employees can raise issues anonymously if they wish.

ORP procedure ESQ-QSH-IP-02 R1, *Allegations Management*, provides instructions for identifying, tracking, resolving, and closing allegations. The procedure defines allegations as potentially adverse conditions brought to the attention of ORP by organizations or individuals who may or may not be Hanford Site employees. To date, ORP Federal employees have not raised a concern through this process.

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The following comments from five different Federal staff members provide insight into why those mechanisms have not been used more frequently:

- “Harassment and intimidation of the ORP staff has occurred and has happened to me.” This individual cited an example in which he/she was intimidated and harassed by a previous ORP Site Office Manager for raising concerns.
  - “The current ORP staff is still affected by their experience with the previous ORP Manager who did not welcome negative feedback from the staff.”
  - “Over at ORP, they don’t want to listen to you unless they agree. The people at the top don’t want to admit that this project is on the wrong track because they would lose their jobs if they did.”
  - One person said that “raising a concern to my management makes me feel like a whistleblower,” implying that this was an unpleasant experience.
  - A manager said that “use of the DPO process is an indication that the normal management systems are not functional.”
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HSS considers that the gap assessment review was insufficiently rigorous in that it did not include any direct examination and evaluation of any performance evidence, such as ECP investigations and case file contents. Contrary to the conclusions in the gap assessment report (e.g., that WTP employees are more comfortable using the various issue systems and that the ECP was effective), the survey data actually shows that a noticeable fraction of employees have concerns about the ECP process. For example, the report cited as a positive factor that 67 percent of respondents had a clear understanding of what comprises a nuclear safety and quality culture. However, the Independent Oversight team considers that about 33 percent of workers lacking a clear understanding of the nuclear safety culture is not a positive statistic, but a condition warranting management attention. Similarly, the report noted that 84 percent of respondents were aware of the various processes for identifying and resolving issues and concerns, but BNI management should be concerned that 16 percent of the workforce is not aware of these important processes. Likewise, the report cited as a positive factor that 69 percent of respondents believe that the existing procedures for identifying and resolving issues are effective, but BNI management should consider that 31 percent of their employees believing that issues management processes are not effective is a significant issue that needs to be investigated to identify its validity and take specific actions to either strengthen these processes or better communicate their effectiveness. Finally, the report cited as a positive factor that 75 percent of respondents believe they can report concerns without fear of retribution, but BNI management should consider that one-quarter of their employees fearing retribution for reporting concerns constitutes a significant issue warranting specific investigation and corrective action.

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