



Hanford Challenge Comments

Re: Defense Nuclear Facilities Safety Board Recommendations on Safety Culture

July 12, 2011

On June 20, 2011, the Defense Nuclear Facilities Safety Board (DNFSB, Board) published a [notice](#) in the Federal Register setting forth a comment period of thirty days, until July 20, 2011, on the issuance of the Board's June 9, 2011 letter to the Secretary of Energy setting forth recommendations to address safety culture issues identified at the Hanford Waste Treatment Plant.

This series of comments is submitted for the record in response to the Federal Register notice. Thank you for considering our comments.

Hanford Challenge is a non-profit organization advocating for a safe and protective cleanup of the Hanford nuclear site. Since the late 1990's Hanford Challenge¹ has been tracking the design and construction of the Waste Treatment Plant (WTP), which will be performing critical work to contain and stabilize Hanford's high-level nuclear waste in glass. The safe containment of this waste is essential in order to protect the Columbia River and future generations from these long-lived contaminants. We believe that a robust safety culture, where employees are encouraged and supported for raising concerns that may compromise the mission of the Waste Treatment Plant, is paramount to ensuring the facility does its job as intended.

From the early stages, the WTP project has been plagued by cost-overruns, missed milestones and safety culture concerns. In July 2010, the most egregious safety culture violation occurred in the case of Dr. Walter Tamosaitis, then the Manager for Research and Technology, a Ph.D. engineer with 42 years of experience, who was terminated for highlighting unresolved technical issues at the WTP. His termination from his position at the WTP by Department of Energy (DOE) contractors, Bechtel National, Inc. and URS, sent a strong message to WTP employees that dissent would not be tolerated. This led to an investigation by the Board into said concerns and subsequently the issuance of a letter recommending the DOE implement a series of safety culture improvements.

Hanford Challenge has been investigating and reporting on the safety culture at Hanford and the Waste Treatment Plant for the past decade. Recently, we have been assisting Dr. Tamosaitis since he was referred to our organization in July 2010 by the DOE Employee Concerns Program. Hanford Challenge strongly supports the recommendations outlined in the letter issued by the DNFSB on June 9, 2011. The following comments describe:

- Background on the DNFSB recommendations and the DOE's response;
- The history of a broken safety culture and the raising of concerns at Hanford's Waste Treatment Plant;

¹ Hanford Challenge results from the Nuclear Oversight Campaign of the Government Accountability Project. HC became independent in January 2008.

- DOE actions that conflict with its claim to be promoting and committing to a robust safety culture;
- Systemic concerns related to spoken and written intents to change without the necessary follow-through and implementation of reforms.
- Concerns with the investigation process for safety culture and whistleblower concerns;
- Safety culture concerns beyond the Waste Treatment Plant;
- The recommendation that DNFSB require DOE to establish Safety Conscious Work Environment procedures and regulations across the nuclear weapons complex.

Hanford Challenge hopes that the DNFSB recommendations and resulting reforms lead to changes that are measurable and improve the currently broken system into an ethical, safe and solution-oriented environment. Moreover, Hanford Challenge supports a viable, effective and safe Waste Treatment Plant at Hanford, and applauds the Board's efforts to assure such a result.

Hanford Challenge Comments

Background:

On June 9, 2011, the Board issued a letter with Recommendations to Energy Secretary Steven Chu concluding that "the Hanford Waste Treatment Plant (WTP) project is not maintaining a safety conscious work environment where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination."

The Board's letter was appropriately critical of the US Department of Energy (DOE) and contractor treatment of a terminated senior engineer, Dr. Tamosaitis. The letter detailed alleged witness tampering, and raised the specter of a federal criminal probe. The Board recommended that the DOE "assert federal control at the highest level" and correct the deficiencies. Finally the Board recommended that the DOE conduct an "independent and non-adversarial review" of the treatment of Dr. Tamosaitis.

On June 30, 2011, Secretary Chu answered the Board's letter stating that he "accepts the Board's recommendations to assert federal control to direct, track and validate corrective actions to strengthen the safety culture at WTP." Chu listed a series of actions that the DOE plans to undertake, including:

- Holding a series of town hall meetings led by senior DOE officials to highlight the importance of maintaining a strong safety culture.
- Conducting an independent review of safety culture across the entire DOE complex.
- Combining the employee concerns programs at Hanford for the Office of River Protection and Richland Operations Office to strengthen the programs and increase their visibility.
- Having ombudsmen from DOE headquarters act as advocates for employees and enable employees to have access to a hotline and an email inbox to ask questions or raise concerns directly or anonymously.

Secretary Chu stated the DOE "cannot accept the allegations" made by the DNFSB without first reviewing the Board's investigative file. The Board declined this request. Secretary Chu did not accept the Board's recommendation to conduct "a non-adversarial review of Dr. Tamosaitis' removal and his

current treatment by both DOE and contractor management and how that is affecting the safety culture at WTP.” Secretary Chu instead stated that DOE would “support” the ongoing Department of Labor review of Dr. Tamosaitis’ allegations.

Secretary Chu also defended the DOE’s Health, Safety and Security Office’s (HSS) review of the safety culture at the WTP. The Board specifically criticized the HSS review in its June 9th Letter, characterizing the review as an example of the failed safety culture that is being reinforced by DOE. He argued that Bechtel commissioned its own internal surveys and training at the WTP as part of efforts to improve the safety culture.

Finally, Secretary Chu took issue with the Board’s assertions that senior DOE and contractor management had suppressed technical dissent on the project and during the DNFSB investigation. He claims in his response that the actions of these senior DOE and contractor managers “may have been misunderstood by the Board.”

While these announced actions sound promising, the Secretary’s refusal to accept the Board’s findings is troubling, as are the DOE’s efforts to obtain confidential investigative files from the Board. More troubling still is the involvement of DOE officials in the removal of Dr. Tamosaitis from his position, and DOE’s failure to either acknowledge or investigate this evidence – put on Hanford Challenge’s website in March 2011. Finally, the track record of the Department in regard to undertaking meaningful and lasting reforms on the safety culture issue, which has plagued DOE for decades, is disheartening. This is best characterized by the opening statement of Congressman Burr in a 2000 [hearing](#) of the Energy and Commerce Committee, where he stated,²

“Today the committee will review whistleblower retaliation at the Department of Energy facilities operated by its contractors. We will primarily focus on two issues: first, has the Department taken the necessary steps to ensure that contractor employees are encouraged to openly disclose violations of law, unsafe work conditions, and other examples of waste, fraud, and abuse without fear of retaliation, or has the Department’s zero tolerance policy for reprisals against whistleblowers simply been a false promise that has died due to the vacuum of leadership? Second, is the Department’s policy to reimburse its contractors’ legal defense costs to fight a whistleblower an appropriate use of taxpayer funds, or has the Department all too willingly funded contractor defense costs in an effort to wear down whistleblowers, regardless of the merits of the whistleblower’s claim?”

The committee has been studying these issues closely, and I am concerned that the Department has once again fallen into a very familiar cycle. This familiar cycle at DOE begins with a genuine understanding of a problem, then a commitment to reform, and then an announcement and lengthy press release from DOE headquarters describing how they will resolve the problem, but the Department always seems to forget to follow through on these reforms.”

² [Hearing](#), before the Subcommittee on Oversight and Investigations of the Committee on Commerce House of Representatives, 106th Congress, Second Session, “WHISTLEBLOWERS AT DEPARTMENT OF ENERGY FACILITIES: IS THERE REALLY “ZERO TOLERANCE” FOR CONTRACTOR RETALIATION?”, May 23, 2000.

In short, a series of pronouncements, without any form of procedural or regulatory follow-through, is just more hot air. At the heart of the matter is leadership. The DOE has not shown ethical, appropriate or accountable leadership in establishing or maintaining a safety culture ethic. In fact, it has done just about the opposite, as will be discussed later. It is critical that *meaningful procedural and regulatory reforms* be implemented to ensure a path forward that protects employees and ensures the construction of a Waste Treatment Plant capable of safely and effectively containing Hanford's high-level nuclear waste in glass.

The following points outline Hanford Challenge's perspective on safety culture at Hanford and provide detailed support for the DNFSB's recommendations:

Safety Culture History and DOE's role:

1. The DNFSB performed an important public service by exercising its oversight responsibilities and alerting the Secretary of Energy to a fact that has been obvious to many Hanford observers for some time – the safety culture at Hanford is designed to suppress the honest reporting of safety and technical concerns that might threaten the cost or schedule of the work. The case of Dr. Walter Tamosaitis is but one of many other lesser known examples of reprisal.
2. Bechtel has a documented history of suppressing employees with safety concerns.
 - a. In 2005, workers approached the Nuclear Oversight Program of the Government Accountability Project (predecessor to Hanford Challenge) and disclosed widespread Quality Assurance violations, defects in workmanship in scrubber tanks that had been delivered and installed as part of the nuclear safety function of the WTP, and widespread suppression of the raising of concerns and issues. Workers approached our program with the express intention of remaining confidential, and funneled information to us for disclosure. In 2006, the CBS news program *60 Minutes* aired a story, [Lethal and Leaking](#) that included coverage of some of these allegations. A letter³ was sent to the Nuclear Regulatory Commission and to DOE outlining the allegations in detail, yet no investigation was ever conducted. It is indicative of exactly how broken the safety culture was and is at Hanford that public interest groups and insiders must work together to reveal the truth about safety at a large government site like Hanford. This remains the case today.
 - b. In 2005, the Department of Energy itself confirmed the existence of a hostile working environment at the Waste Treatment Plant in a January 18, 2005 [Report](#). The DOE investigation team interviewed 117 employees, and found:

Greater than 50% of the workers interviewed believed their job would be in jeopardy due to their participation in this inquiry. Most of the interviewees

³ Attached for your review.

mentioned other workers had issues but felt they could not risk their employment by coming forward. ... Roughly 20% voiced the belief that when individuals raise safety concerns, those individuals are targeted for future lay-off lists. Roughly 15% of the interviewees claimed there was fear of lay-offs for workers who reported issues to Labor Relations or with the Employee Concerns process.⁴

3. In 2008, the DOE imposed a [civil penalty](#) for nuclear safety violations against Bechtel National, Inc. based upon the findings of a DOE hearing officer that a Bechtel engineer had been terminated after having raised nuclear safety concerns.⁵
4. Also in 2008, four Bechtel managers were [disciplined for eavesdropping](#) on a confidential meeting between DOE Manager Shirley Olinger and five Hanford safety craft representatives from the Waste Treatment Plant who were meeting to complain about safety problems at the plant. The meeting was taking place in the DOE Manager's office, and Bechtel managers listened to the meeting via a cell phone that was "inadvertently left on" after a manager called one of the workers. It was due to a whistleblower that Bechtel's illegal eavesdropping was revealed.
5. Despite these findings, little was done to address the broken safety culture that plagues the WTP. Rather than see the consistency between the findings from 2005, 2006, 2008 and today, DOE has ignored the documented history.
6. The Department of Energy is caught in a conflict of interest from which it cannot easily extricate itself. As a signatory to the Tri-Party Agreement (TPA), a legally-binding contract between the State of Washington and the US EPA, the DOE is required to meet the deadlines it has itself negotiated. The TPA agencies occasionally modify milestones for cleanup in a change package. The most recent changes were signed in the fall of 2009. In July 2010, Dr. Tamosaitis, among others, raised concerns about the closure of the design for the pretreatment plant. The closure of this part of the WTP design was due in July. The prospect of missing the first significant milestone was too much for DOE or Bechtel to tolerate and Dr. Tamosaitis was dismissed from his position and the pretreatment design was closed, thus meeting the milestone and securing a \$5 million fee for Bechtel.
7. There is strong evidence in publicly available email communications showing a DOE official instigating the removal of Dr. Tamosaitis. With such clear evidence of DOE participating in this high profile termination, the assertion by Secretary Chu that: "Over the past year, the Department has undertaken a broad range of steps to assure a strong and questioning safety culture at WTP" strains DOE's credibility.

⁴ Letter, R. Schepens, DOE ORP to J.P. Henschel, BNI, "Contract No. DE-AC27-01RV14136 – Employee Concerns Inquiry and Analysis Report," January 18, 2005, Att. p. 2.

⁵ Letter, M. Thompson, DOE-HSSA, to W. Elkins, BNI, Preliminary Notice of Violation, September 15, 2008.

8. Further, there are credible allegations that senior DOE officials attempted to improperly influence the testimony of at least one senior technical expert, who was allegedly upbraided in a semi-public fashion. These kinds of interactions form the basis of the Board's investigation around alleged [witness tampering](#).
9. The DOE's Health, Safety and Security (HSS) office's investigation into the safety culture that Secretary Chu alludes to was a farce. Several employees told Hanford Challenge that their allegations were not reflected by any measure in the report, and stated that they felt betrayed by the DOE investigation, which exposed them to reprisal and discrimination without reflecting their true concerns. Employees were, in some cases, greeted and/or escorted to the HSS interviews by contractor and/or DOE managers with the HSS investigators when the witnesses arrived. This approach not surprisingly had the effect of suppressing the honest and free flow of testimony. Even in the circumstances, some employees did speak out to HSS investigators, but their concerns were dismissed as being "pockets" in an otherwise healthy culture. Yet the instance of one employee who is fearful of raising a concern may be all it takes to lead to a preventable disaster. The DNFSB called it correctly when it stated that the HSS investigation was an example of the broken safety culture.
10. Mere words will not address a broken safety culture. It is the actions of the DOE that matter most. To date, DOE's actions fall far short of those necessary to bring about a healthy safety culture:
 - DOE has partnered with the contractor to reward the premature closing of a dangerous design (five million dollar incentive fee was obtained for closing this milestone), over the objections of the senior engineer and manager whose job it was to raise such objections. That engineer was subsequently terminated from his position at the WTP – an action that was initiated by the DOE.
 - The DOE official who initiated the removal of Dr. Tamosaitis stated in a [sworn statement](#), which he provided to the Department of Labor, that he did not direct any contractor to take any specific actions regarding Dr. Tamosaitis in spite of [evidence to the contrary](#).
 - The DOE has yet to conduct any sort of investigation into the removal of Dr. Tamosaitis. His termination is a continuous reminder to all WTP employees of the fate that lies in store for those who raise inconvenient truths, even when it is their job to raise those concerns.
 - Despite the Board's thorough documentation of the Office of Health, Safety and Security's tragically botched review of the safety culture at the WTP, the Secretary

continues to defend that review! We can now expect that the same level of professionalism and competence will be brought to bear in the DOE's Extent of Condition review across the complex. We will not be terribly surprised when no problems are found – just “pockets” that we can all safely ignore.

- DOE has not conducted any kind of investigation into the actions of the Federal Project Manager for DOE against Dr. Tamosaitis, despite Hanford Challenge making such [evidence](#) public in March 2011.
- DOE officials have attempted to improperly influence the testimony of a technical expert and have engaged in harassment and intimidation against that expert. The DOE asserts that this was all just “a misunderstanding,” and claims it does not have access to the sworn statements and evidence relied upon by the DNFSB despite the apparent presence of DOE lawyers during parts of the DNFSB investigation in which sworn statements were taken.
- The DOE has gutted its employee concerns programs under Secretary Chu across the DOE complex. Secretary Chu presented in the response to the DNFSB recommendations that DOE is merging the employee concerns offices of Richland Operations (RL) and Office of River Protection (ORP) at the Hanford Site as evidence of progress. This is a mistake for multiple reasons:
 - i. Each Hanford field office oversees a different geographic cleanup area with its own quirks, challenges and conflicts. For this reason, both DOE RL and DOE ORP should have their own employee concerns offices that understand the scope of work their contractors are conducting and is equipped to handle those concerns.
 - ii. Currently, the employee concerns offices are notorious for referring problems back to the contractors to manage. This is not effective and has often exacerbated problems instead of resolving concerns. Employees usually seek help from DOE when they are not finding redress from their employer. In practice, the employee concerns program is avoided by workers. It is widely known that concerns are referred back to the employers who have been unable or unwilling to solve a problem and that those who have attempted to use DOE's employee concerns program have suffered discrimination, fear of reprisal and, in some cases, termination for bringing their concerns forward.
 - iii. Employees have complained, repeatedly and over the years that their concerns were never investigated, were closed out without input from them, or simply ignored. There have been periods with the DOE Office of River Protection when

Employee Concerns were properly investigated and resolved. The rigor and reliability of the investigations seems tied to the political leadership in the local office at the time.⁶

iv. Combining the offices will not improve their effectiveness. Clear actions must be taken by each field office to address and reform their ineffective, understaffed and politicized programs. It would be prudent to seek independent assistance in reforming these programs to begin the slow process of building worker trust in the program. Reform will need to be demonstrated by resolving worker concerns without ill-effect to their careers.

- The DOE has been dismissive towards the DNFSB as evidenced by internal emails and memoranda (which have been provided to the Board and to Congress) and in public correspondence with the Board. For instance, in February 2011, the General Counsel of the DOE challenged the Board's jurisdiction and competence to conduct an investigation into allegations of witness tampering at a Board hearing.
- The DOE's demand to have access to the Board's investigative confidential files is further evidence of DOE's inability to recognize a broken safety culture. The testimony in the Board's files is confidential to protect those who spoke to the Board. Workers spoke to the Board in confidence *because* they were afraid of the impacts to their careers if DOE or Bechtel management knew that they had spoken up.

11. In light of this history, it rings hollow that DOE will conduct town hall meetings to assure workers that it is now safe to raise safety and technical concerns. Does the DOE really think that employees will attend and start raising important safety, health and technical concerns about the project at such meetings? Or that they will utilize the "internal processes" that somehow always fail to result in the protection of employees who raise concerns?

12. Secretary Chu's actions fall far short of meaningful action. Town hall meetings, telling workers it is now somehow safe, encouraging workers to use the many (broken and unreliable) processes for addressing concerns – none of these actions are lasting, measurable or enforceable. They do *nothing* to address the safety culture issues identified by the Board. First, there must be a thorough and independent investigation and airing of the evidence before an impartial and empowered body that can take appropriate action to remedy the injustices and get the Waste Treatment Plant back on track. The DNFSB is that body – and it must have the enforcement tools and capacity to effectively undertake this mission. Second, there must be a set of

⁶ This was especially true during the reign of Manager Shirley Olinger, who responded well to many employee concerns, acted to protect employees suffering reprisal, and demanded a high level of performance from the DOE employee concerns office at ORP.

enforceable procedures and regulations that establish clear expectations for a non-chilled work environment, with meaningful investigative and enforcement tools attached.

13. The Board correctly noted that the DOE should be conducting an “Extent of Condition” analysis to determine whether the safety culture problems extend beyond the Waste Treatment Plant. Hanford Challenge fully supports this Recommendation. Retaliation against employees throughout the Department of Energy complex is hardly a recent phenomenon. Again, Congressman Burr from the 2000 House Committee on Energy and Commerce, Oversight and Investigation Committee [hearings](#):

In 1995, former Secretary Hazel O'Leary presented a package of whistleblower protection initiatives, including a zero tolerance policy for reprisals and a proposed limitation on the reimbursement of contractors' legal defense cost in certain cases, but the implementation of these reforms at DOE sites has been inconsistent due to the lack of a clear guidance from headquarters--again, an all-too-familiar problem at the Department of Energy.

Soon after announcing these reforms, Secretary O'Leary realized that they were not being implemented. In March 1996, in a press release she quoted, “These whistleblower initiatives have not been implemented to my satisfaction, and I want to get this effort back on track.”

*Secretary O'Leary asked former Under Secretary Tom Grumbly to take the lead, but again implementation was derailed. **In my mind, the real test of zero tolerance policy is whether contractor employees are now more willing to come forward with a legitimate workplace concern without the fear of retaliation from management and with confidence that DOE will protect them.***

Unfortunately, we will hear about the cases today of several whistleblowers who not only suffered acts of reprisal when they initially identified serious safety concerns, but who also, in some cases, were subject to ongoing and unrelenting retaliation by both DOE and its contractors throughout the complaint process.

In all these cases, the Department of Labor investigated the complaints and issued findings in favor of these whistleblowers. Remarkably, the Department has responded by providing virtually no support to the whistleblowers, while providing generous taxpayer support for the contractors fighting these meritorious claims.⁷

Safety Culture Investigations:

14. Hanford Challenge partially supports the Board Recommendation that the DOE “conduct a non-adversarial review of Dr. Tamosaitis’ removal and his current treatment by both DOE and

⁷ See footnote 2 for citation.

contractor management and how that is affecting the safety culture at WTP.” The nature and validity of this review must be carefully considered. As the Board notes, and the DOE asserts, such a review has already been conducted by DOE’s Office of Health, Safety and Security – a review criticized by the Board yet belabored as well-done and credible by the DOE.

15. Given the DOE’s expressed attitude, how can the Board rely upon the DOE to conduct an impartial and credible review? Hanford Challenge notes that the Secretary of Energy has refused to accept the Board’s recommendation on this matter, repeating the oft-stated position that the Department of Labor is conducting such a review. There are multiple issues associated with this claim:
 - a. A Labor Department review is not “non-adversarial.” It is an adversarial proceeding brought by one aggrieved employee with a specific set of allegations.
 - b. The Labor Department process is designed to resolve particular allegations of reprisal, not examine the larger safety culture effects of a termination, as the Board is suggesting.
 - c. The Labor Department investigation is not timely, as evidenced by the fact that, a year later, the investigation phase has yet to even begin.
 - d. The Labor Department review is neither complete nor credible. The Labor Department investigator rarely travels to a site to conduct interviews, does not always take sworn statements, does not seek evidence from the parties, does not have subpoena power, and is not required to do any of these things. After an initial decision is reached in such cases (by OSHA), an Administrative Law Judge is appointed to adjudicate the proceedings in a traditional court setting. Cases are often dismissed on technical grounds. For instance, the statute of limitations for these kinds of cases are as short as 30 days. While there is an appeal process to the Secretary of Labor’s Administrative Review Board, these proceedings can, and usually do, take years. Some cases have dragged on for 8 years.
16. As the opening statement of Rep. Burr, indicates, *even if* the Labor Department issues findings on behalf of a wronged employee, the Department of Energy may do little to nothing about it. For instance, in October 2007, the Washington Supreme Court affirmed a unanimous jury verdict in the case of eleven pipefitters, whistleblowers at Hanford, with an award of \$7.3 million. Internal agency records indicate that the contractor, Fluor Federal Services, Inc. charged the Department millions of dollars in attorney fees and costs – effectively putting the Department in the position of subsidizing illegal retaliation. The DOE took no action on this verdict, despite its vaunted “zero tolerance policy,” and Fluor Federal Services still has a contract at the Hanford Site. Why would it be any different today?
17. More recently, the Labor Department process came under heavy fire from the Government Accountability Office (GAO) last year. The GAO reported to Congress its findings on the OSHA whistleblower program in its report titled [“Whistleblower Protection: Sustained Management](#)

[Attention Needed to Address Long-standing Program Weaknesses.”](#) The GAO concludes that OSHA neglected its whistleblower program and failed to implement GAO’s prior recommendations. Senators Tom Harkin (D-IA) and Patty Murray (D-WA), and Representatives George Miller (D-CA) and Lynn Woolsey (D-CA) responded to the GAO report with a press release stating:

The GAO found that for the last two decades, the Labor Department has not provided adequate management attention to the whistleblower program. The independent watchdog agency said the program’s training for investigators and their supervisors is inconsistent from region to region, that internal controls are lacking to monitor compliance with policies and procedures, and that few of the GAO’s previous recommendations from 2009 have been implemented.

The GAO also noted that despite an increased workload over the years, the number of inspectors has remained relatively flat, and urged the program establish a separate budget for the whistleblower program. In fiscal year 2009 more than 2,100 whistleblower complaints were filed with OSHA. Congress provided the Labor Department with funds for 25 additional whistleblower investigators in fiscal year 2010 to deal with a growing caseload.⁸

18. Given the documented problems with this process, how, exactly, is the Labor Department investigation helpful to the DOE in deciding whether or not there is a chilling effect at the Waste Treatment Plant? The DOE should drop the charade of pretending that the Labor Department process is any kind of replacement for the Department itself to arrive at its own independent conclusions about the reprisal against Dr. Tamosaitis and its effect on safety culture at the WTP.
19. Therefore, Hanford Challenge supports the Recommendation that an independent investigation be conducted, *but not by DOE*. The final and most salient point here is that DOE is itself accused of being part of the discriminatory actions against Dr. Tamosaitis, and is named as a defendant in the very same complaint being touted by DOE. Clearly, DOE has a conflict of interest in any kind of investigation that involves this case. However, the issue of whether there was reprisal against Dr. Tamosaitis and a resulting chilling effect on some employees is an urgent and important one. Therefore, Hanford Challenge recommends that the Defense Board itself commission such an investigation by a reputable and credible outside party, to report its findings to both DOE and the Board. Appropriate action could then be taken in response to the findings.

Safety Culture Concerns Beyond the Waste Treatment Plant:

20. At the Hanford Site, Hanford Challenge has been investigating allegations of reprisal against tank farm workers, including the termination of four Health Physics Technicians since March 2011.

⁸ GAO, WHISTLEBLOWER PROTECTION: Sustained Management Attention Needed to Address Long-standing Program Weaknesses, GAO-10-722, August 2010.

Numerous workers have contacted Hanford Challenge with concerns about a chilled work environment due to these terminations. The workers perceive the terminations as retaliatory discharges due to the fact that these employees raised numerous safety issues and consistently filed Stop Work Orders, Problem Evaluation Requests and Employee Concerns. Unfortunately, it appears that the Department of Energy has failed to conduct any kind of independent assessment of these terminations or of the alleged chilled work environment. Instead, the Department has once again partnered with the contractor in presenting a unified front in denying that there is any kind of problem, even though the Department has not conducted its own investigation.

21. The level of fear and distrust among other tank farm workers (besides Health Protection Technicians) towards raising concerns appears to be very high, judging from the number and quality of contacts we receive from that community, as well. Workers report that filing a Stop Work, a Problem Evaluation Request, or an Employee Concern can result in discrimination, retaliation and discharge on trumped-up charges. Hanford Challenge is very concerned that the Employee Concerns manager at one tank farms' contractor also participates in disciplinary decisions and assists managers in navigating coaching and other disciplinary actions.
22. The problems identified in point 20 and 21 further support the Board's recommendation that DOE should be conducting an "Extent of Condition" analysis to determine whether the safety culture problems extend beyond the Waste Treatment Plant.
23. The protection of dissent is critical to safety, as the Board recognizes. In Japan, we are witness to the failure of a system to heed internal warnings about the engineering failures that led to the meltdowns at the Fukushima reactors, and the ongoing industrial disaster that has spilled massive amounts of radioactivity to the environment. In 2002, a Japanese whistleblower exposed two falsified inspection reports regarding the Fukushima plant. This led to the uncovering of twenty-seven other falsified safety reports, the shutdown of 17 reactors, and intense regulatory and public censure. Tepco, the Japanese utility, responded to the scandals by increasing the number of nonvoting external auditors, along with a corporate code of conduct and an ethics committee to enforce it. Managers set as explicit goals to "reform the corporate culture" and "restore public confidence." But, as an outside observer [wrote](#), "in the absence of legal or regulatory changes, any single company trying to shake up its corporate governance culture is like a drug addict trying to go clean while still hanging around his substance-abusing friends: There are no role models and plenty of bad peer pressure."⁹

⁹ Article, *The Fukushima Warning, Mismanagement at Tepco is a symptom of deeper governance problems in corporate Japan*, [Wall Street Journal](#), June 30, 2011.

Establishing a Safety Conscious Work Environment:

24. Under the Board's [enabling statute](#), the Board is empowered to "prescribe regulations to carry out its responsibilities."¹⁰ We submit that the time has come for the DNFSB to invoke its authority to require DOE sites under its purview to establish and maintain a Safety Conscious Work Environment. Alternatively, the Board is able to make a Recommendation to the Secretary of Energy to promulgate such regulations.

25. A Safety Conscious Work Environment (SCWE) is defined as a work environment in which employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.¹¹ Attributes of a Safety Conscious Work Environment include (1) a management attitude that promotes employee involvement and confidence in raising and resolving concerns; (2) a clearly communicated management policy where safety has the utmost priority, overriding, if necessary, the demands of production and project schedules; (3) a strong, independent quality assurance organization and program; (4) a training program that encourages a positive attitude toward safety; and (5) a safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.¹²

Recommendations:

26. Hanford Challenge requests that the DNFSB:
 - A. Establish, or issue Recommendations to the DOE to establish Departmental policy that calls for the positive presence of a Safety Conscious Work Environment in its nuclear facilities;
 - B. Institute rules, procedures and regulations requiring DOE managers, supervisory personnel, and contractor and subcontractor employers to achieve and maintain Safety Conscious Work Environment programs at nuclear sites;
 - C. Establish protocols and procedures for DNFSB field representatives and investigators to ascertain, through its normal inspection duties or upon good cause, whether a demonstrative "Safety-Conscious Work Environment" program exists at a specific facility or within any DOE division, and to order corrective actions to remedy departures from such an environment.

¹⁰ 42 United States Code, section 2286a. "Functions of the Board. [Atomic Energy Act, Sec. 312] (c) Regulations. The Board may prescribe regulations to carry out the responsibilities of the Board under this subchapter."

¹¹ Nuclear Regulatory Commission, Safety Culture, at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>

¹² US Nuclear Regulatory Commission, Office of Nuclear Reaction Regulation, NRC Regulatory Issue Summary, 2005-18, GUIDANCE FOR ESTABLISHING AND MAINTAINING A SAFETY CONSCIOUS WORK ENVIRONMENT, August 25, 2005. On the web at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2005/ri200518.pdf>.

27. Such regulations are consistent with the policy and purpose of the Atomic Energy Act which includes advancing “the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.”¹³
28. It has been repeatedly demonstrated that workers are the key ingredient to protecting the health and safety of the public and workers. Agency and contractor officials alike rely upon employees as early warning systems — to exercise sound judgment and prevent problems from escalating into incidents that lead to wasted resources, environmental threats, injury, and death.
29. As the Board has recently documented, employees who have raised environmental, safety and health concerns have subsequently experienced significant workplace reprisal that has impacted their careers, financial stability, and personal and familial relationships.
30. Too often, concerned employees are turned into whistleblowers who take their concerns up the chain of command and often to government agencies, the news media, Congress, and the public in an effort to bring attention and reform to an issue that involves safety, health, protection of the environment, management of fiscal resources, security, and other vital public policy concerns. Often, such employees fall victim to harassment, intimidation, retaliation, and discrimination. Many have been terminated from their jobs, and their careers ruined.
31. The time is right for there to be established an enforceable, measurable, and accountable system of regulations to be enacted by the DOE, at the Board’s instigation. In the last twenty-five years, there have been hundreds of cases from DOE sites brought by workers who have resorted to litigation in courts and before administrative agencies because of alleged reprisals. These cases have cost contractors, the government and the employees literally millions of dollars in attorney fees and judgments, fines and penalties.¹⁴
32. Operations at DOE facilities have been adversely affected in a multitude of ways because of these cases. A systemic approach is needed to institute and encourage a culture at DOE nuclear facilities that assures the prompt and safe reporting of concerns in a manner that protects the disclosure and the person making the disclosure, and results in a timely and effective review of the allegations.
33. It is fundamental to the mission of the Department of Energy that it protect the public, safety and health in the regulation and control of its nuclear weapons production facilities. It is also

¹³ 42 U.S.C. § 5801(a). Also see, 42 U.S.C. § 7101 (Department of Energy Organization Act) and 42 U.S.C. § 2011, (the Atomic Energy Act of 1954, as amended.).

¹⁴ For example, in October 2007, the Washington Supreme Court affirmed a jury verdict in the case of 11 pipefitters, whistleblowers at Hanford, and an award of \$7.3 million. Internal agency records indicate that the contractor charged the Department millions of dollars in attorney fees and costs in addition to the award – effectively putting the Department in the position of subsidizing illegal retaliation.

crucial that DOE and DOE contractor employees be encouraged to voice Environmental Safety and Health concerns without experiencing reprisal.

34. More importantly, a “chilling effect” message is sent to the workforce at large when an employee is terminated for raising a concern, as the Board has noted. Such actions suppress the reporting of concerns as employees understandably become fearful of suffering reprisal were they to report a concern. As a result, the work environment destabilizes, morale among the employees dampens and the atmosphere becomes charged with covert hostility.
35. The commercial nuclear industry has a long history of dealing with the issue of employee concerns. During the past twenty years, the industry has evolved principles and procedures that establish work environments encouraging safety reports and prohibiting retaliatory conduct that could chill such reports. The Nuclear Regulatory Commission (NRC) defines its mission as the protection of the public safety and health in its regulation of commercial nuclear facilities.
36. The NRC has made a clear and cogent determination that the ability of employees to raise concerns is integral to the protection of public health and safety. The hazards at DOE nuclear facilities are no less dangerous, and yet throughout the DOE complex, reprisals against employees continue unabated and hostile working environments are instituted without challenge from the DOE. We urge the prompt incorporation of the NRC methodology for protecting employee concerns at its facilities. This would assist the DOE in improving its operations consistent with its mission and aid in establishing a work environment that has a “zero tolerance for reprisal” in fact and not just in rhetoric.
37. In 2005, the NRC issued a Regulatory Issue Summary, (RIS 2005-18, “Guidance for Establishing and Maintaining a Safety Conscious Work Environment”) which identified effective practices for licensees and contractors “for ensuring problem identification and resolution essential to ensuring the safe use of nuclear materials and operations of facilities.” (Id., at RIS 2005-18 at 3.)
38. Some of the principles and guidance can help structure Board-promulgated regulations for a DOE version of the Safety Conscious Work Environment (SCWE). These could include:
 - Establishing a Policy Statement published to all employees that asserts that it is “everyone’s responsibility to promptly raise concerns” and “makes clear that retaliation for doing so will not be tolerated.” (Id. At 4) This includes allowing and encouraging workers to use work hours to report concerns, sanctions for retaliation, setting expectations for management behaviors that fosters employee confidence in raising concerns, providing information on the various avenues for raising concerns, making clear that employees have the right to raise concerns externally, and a commitment to training.
 - The training program helps reinforce the principles and practices of SCWE and should include clear explanations of the legal definition for protected activity,

adverse action and retaliation, as well as consequences for deviation from applicable laws and regulations. Training can also include defining gateways to identify concerns, appeal processes, and alternative processes for raising concerns. Training can also emphasize appropriate management behaviors, including the importance of protecting confidentiality, fostering good listening skills and identifying countervailing pressures (goals and deadlines) that may interfere with appropriate listening and responses.

- Important aspects of an effective SCWE include conducting the necessary open inquiry to identify the full scope of the concern(s) being brought forward, and assuring that concerns are promptly prioritized, reviewed, and resolved. Employees who bring forth concerns should be provided feedback, and appeal avenues made available for employees who continue to hold a concern.
- Management should establish an alternative process to raising concerns with line management.
- The program requires assessment, including lessons learned evaluations, benchmarking, the establishment of performance indicators, survey and interview tools, direct observations, exit interviews, and 360-degree appraisals.
- Contractors should be required to flow down expectations and requirements of the SCWE program to sub-contractors.
- Senior management should be involved in reviewing employment actions when there is any indication that it involves an employee who raised a concern.

Closing

Hanford Challenge appreciates and applauds the work of the Defense Nuclear Facilities Safety Board at Hanford and throughout the DOE complex. The Board is the only entity that is conducting independent oversight on nuclear safety matters and is a much-needed voice. Hanford Challenge will be advocating that the Board get increased capacity and authority from Congress to enable it to conduct the oversight necessary to assure that safety and health is safeguarded throughout DOE's nuclear weapons complex.

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