

May 12, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	Docket No. PAPO-00
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	
(High Level Waste Repository: Pre-Application Matters)	)	NEV-01
	)	

AFFIDAVIT OF JULIE A. GOECKNER

1. I am the Program Manager for the U. S. DOE, Office of Civilian Radioactive Waste Management (OCRWM) Employee Concerns Program and have held this position since July, 2004.

2. In addition to this position, I serve as the DOE liaison to the Board of Directors for the Employee Concerns Program Forum (ECPF), a professional organization for nuclear industry Employee Concerns Managers and representatives of the Nuclear Energy Institute and the Nuclear Regulatory Commission.

3. Before assuming my current position, I was the Contractor Industrial Relations Manager at the U.S. DOE Hanford Nuclear Reservation in Richland, Washington. I held that position from June 2002 until I moved to the OCRWM program in Las Vegas, Nevada.

4. During this same period of time, I was a part-time independent consultant employee concerns investigator for a world-wide corporation.

5. Prior to this, I was the U.S. DOE Employee Concerns Program Manager for the Hanford Nuclear Reservation in Richland, Washington. I held that position from January 2000 until June 2002.

6. In total, I have worked for the U.S. DOE for over 20 years in various capacities. Because I have spent the greater part of my professional career working in and for nuclear related employee concern programs, I have extensive knowledge and experience regarding the essential requirements for successful operation of such programs.

7. Safety is a paramount consideration in the design, construction, operation, and maintenance of a nuclear facility. Nuclear facilities strive for safety by, among other things, encouraging every employee to make safety his or her business. As the OCRWM website says, "The Office of Civilian Radioactive Waste Management is committed to fostering a safety-conscious work environment—one where every employee is encouraged to identify and raise work-related concerns and issues. This requires a culture of open communication, where conflicts are identified, resolved quickly at the lowest possible level, or escalated promptly, if that becomes necessary. In this environment, all employees are free to identify and raise concerns and issues without fear of harassment, intimidation, retaliation, or discrimination." See <http://www.ocrwm.doe.gov/safety/scwe.shtml>.

8. This OCRWM commitment parallels the regulatory requirements of the Nuclear Regulatory Commission that licensees maintain a work environment free from

discrimination or retaliation for reporting safety concerns. See 10 CFR § 63.9. This NRC regulation prohibits discrimination or retaliation against an employee for engaging in certain protected activities, including raising issues about violations of statutes or regulations.

9. Ideally, employees at nuclear facilities would have no fear that raising safety-related issues might lead to discrimination or retaliation. Human nature being what it is, some employees may rationally entertain such fears, and in the absence of a means by which employees could proceed in confidence, safety-related issues might not be raised. Such an outcome is contrary to DOE's goals for the Yucca Mountain Project and contrary to the U. S. Nuclear Regulatory Commission's regulatory expectations.

10. In fact, the Safety Conscious Work Environment Policy for the Yucca Mountain Project (YMP), dated July 22, 2004, states, "Safety is the overriding principle guiding YMP work activities" and that, "Personnel performing YMP work are the principal means for the discovery of conditions that could negatively affect quality or safe operation. As such, all personnel performing YMP work are responsible for identifying and reporting nuclear safety, quality, reliability, and regulatory concerns promptly in a clear, complete, and accurate manner."

11. The U.S. DOE OCRWM Concerns Program (OCP) was established in compliance with DOE Order 442.1A, *Department of Energy Employee Concerns Program*, dated June 6, 2001 [See Attachment A]. As stated in the DOE Order, the objective of the program is to "ensure employee concerns related to such issues as the environment, safety, health and management of DOE and the National Nuclear Security Administration programs and facilities are addressed through – a) prompt identification,

reporting, and resolution of employee concerns regarding DOE facilities and operations in a manner that provides the highest degree of safe operations; b) free and open expression of employee concerns that results in an independent, objective evaluation; and c) supplementation of existing processes with an independent avenue for reporting concerns.

12. In addition to this requirement, the U. S. Nuclear Regulatory Commission requires all licensees to establish and maintain a safety-conscious work environment and has approved, as a key component of such an environment, the use of employee concerns programs consistent with expectations identified in NRC Inspection Manual, Inspection Procedure 40001.

13. The OCRWM Concerns Program operates independently of line management. This program has the responsibility and the authority to investigate concerns brought by employees—however or by whomever raised—about safety and other workplace issues that could compromise the ability of OCRWM to achieve its goals. Where investigation reveals that concerns may be justified, the program has the power to initiate deficiency statements that require line management to take corrective actions or invoke the applicable Office of Repository Development (ORD) or OCRWM processes for resolving or mitigating the issues. In addition, the concerns program independently verifies that proper execution of corrective or mitigating actions have been completed.

14. Consistent with both DOE Order 442.1A and NRC expectations, the OCP is a confidential program – it is specifically intended to provide employees an independent avenue of redress where they can raise concerns outside of line management

without fear of reprisal. Its policies and procedures allow employees to request confidentiality. In fact, OCP procedure states, "Maintaining confidentiality is a cornerstone of the OCP and is a critical factor in establishing and maintaining respect for and use of the OCP process. The OCP is designed and will be administered in a manner that maintains an employee's confidentiality, when requested, to the maximum extent practicable. Individuals may also submit concerns anonymously." As such, the procedures protect the confidentiality of the individual raising the concern, individuals interviewed in the course of an investigation, and individuals that the concerns are raised against.

15. To inform employees of its availability and to encourage them to raise concerns, the OCP advertises itself through posters, circulars, newsletters and other communications posted in or distributed to every office or facility associated with the Yucca Mountain Project. [See Attachment B]. The assurance of confidentiality, prominently mentioned in the OCP's circulars, and other communications, is central to the OCP.

16. During the intake process of a concern, the OCP informs the concerned individual (CI) about the confidentiality they can reasonably expect. Each CI is requested to sign a confidentiality form [See Attachment C]. Although confidentiality is not a guarantee in all instances, the circumstances for disclosure are limited in scope and purpose consistent with the NRC's expectation that an employee concerns program use every reasonable effort to protect confidentiality.

17. In addition to meeting NRC's expectations regarding confidentiality, this level of confidentiality is consistent with DOE Order 442.1A, 4.d.(3) which states, "In

maintaining ECP records, steps must be taken to protect the identity of the concerned employee consistent with the employee's request for confidentiality and the provisions of the Privacy Act and the Freedom of Information Act." In fact, these records are required to be maintained as part of the DOE Privacy Act Systems of Records DOE-3 (Employee Concerns Program Records).

18. Broad publication of documents even in redacted form is entirely inconsistent with the program's promise to take all reasonable steps to ensure confidential treatment of program documents and could significantly reduce, or even eliminate, an employee's willingness to raise concerns. The mere act of publishing concerns statements could result in confidentiality being compromised.

19. Consistent with the promised confidentiality and NRC expectations, on opening a file for a concern, the OCP uses a file numbering system, disclosed only as necessary to authorized parties, that links the concerned individual to the file and allows the concerned individual to communicate with the OCP without having to disclose his or her identity. OCP files are locked in fire proof cabinets and access is strictly controlled to only those with a need to know. Those who need access are required to sign a confidentiality statement [See Attachment D] that is approved by me personally and is limited to only those applicable files. Documents created in the course of an employee concern investigation are created on a sensitive, unclassified secured computer drive, again with access to only those working directly with OCP on those concern files. Documents are not scanned into or stored on OCRWM's Records Management System. Specific concern file information is not allowed to be sent via e-mail if it identifies any specifics regarding a concern file. In this and other ways, the OCP takes great pains to

ensure confidentiality and to offer both the appearance and the reality of actual confidentiality.

20. My extensive experience in employee concerns programs specifically confirms that confidentiality is essential to an effective employee concerns program. Important and significant safety-related concerns are raised through an employee concerns program that otherwise either would not be raised at all or would be raised much later, when the costs and consequences of dealing with the issue are greater. Employee concerns programs accordingly serve a significant and substantial role in achieving safety-related goals for nuclear facilities.

21. The NRC itself recognizes the importance of the functions filled by employee concerns programs. The NRC conducts inspections focused specifically on whether licensees are resolving "safety-related concerns reported by licensee or contractor employees while preventing any retaliatory action against those employees." [See Attachment E, NRC Inspection Manual, Inspection Procedure 40001]. As part of that inspection, the NRC assesses "how employees are assured that confidentiality will be preserved" and determines "whether sufficient controls are in place to protect those employees who identify concerns from any type of retaliatory action." NRC Inspection Manual (Procedure 40001-02(f), and (g)). A licensee's failure to have in place suitable and sufficient guarantees of confidentiality or violation of assurances of confidentiality could lead to a finding of violations and a requirement of corrective action. For example, I am aware that the NRC has required a licensee to take corrective action following violations of confidentiality in an employee concerns program and to demonstrate the effectiveness of such action in restoring employee confidence in the program.

22. Again, confidentiality is a cornerstone of an effective employee concerns program which is required by both DOE Order and by NRC regulations and is a critical component of maintaining the safety conscious work environment (that is, an environment where employees feel free to raise concerns without fear of harassment, intimidation, retaliation and discrimination). Requiring disclosure of the OCP files, even in redacted form, potentially compromises the confidentiality that should be accorded individuals who report a concern, those interviewed in the course of a concern investigation, and those against whom an allegation may be made. The risk is that individuals may be identified by involved or knowledgeable persons from the non-redacted portions of a document, exposing them to the very risk of discrimination and retaliation, whether real or perceived, that confidentiality is intended to eliminate.

23. Disclosure, moreover, even in redacted form compromises the perception of effective confidentiality associated with the program. The more OCP files that are disclosed, the more certain it is that the identity of concerned or interviewed individuals will be publicly revealed. Any such revelation will convince other employees—employees who may be considering raising a safety-related concern—that the OCP's promise of confidentiality is an empty one. For all these reasons, requiring disclosure of OCP files would create a chilling effect, meaning that employees would be discouraged from raising concerns, including safety-related concerns, thus impairing an important pillar of DOE's program to establish and maintain a safety conscious work environment. [See Attachment F, Safety Conscious Work Environment].

24. Employee concerns programs serve an important role in promoting and ensuring the safe design, construction, operation, and maintenance of nuclear facilities.

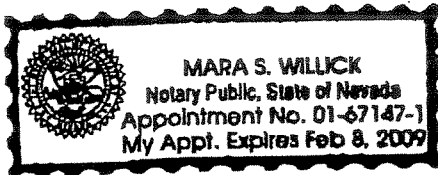


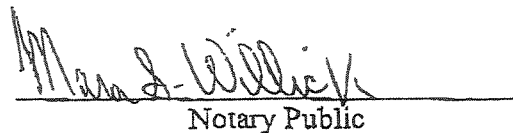
Disclosure of files—even redacted files—from such programs creates a significant risk of eliminating, in the view of employees, a critical and independent means of raising safety-related claims without running the risk of discrimination or retaliation. Given the substantial contribution such programs make to the safety of nuclear facilities, this mere act alone would be costly and have detrimental impact on employees and the program.

  
Julie A. Goeckner

State of Nevada  
County of CLARK

Signed and sworn to (or affirmed) before me on May 12, 2005 by  
Julie A. Goeckner.



  
Notary Public

My Appointment expires: Feb. 8, 2009.

**ATTACHMENT A**  
**DOE O 442.1A**

**THIS PAGE IS TO REMAIN WITH DOE O 442.1A**

THIS PAGE TRANSMITS AN ADMINISTRATIVE CHANGE TO DOE O 442.1,  
DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM, DATED 2-1-99. THIS  
PAGE ALSO CANCELS DOE O 442.1 AND REISSUES IT AS DOE O 442.1A, DEPARTMENT  
OF ENERGY EMPLOYEE CONCERNS PROGRAM, DATED 6-6-01.

THE ADMINISTRATIVE CHANGE THAT OCCURRED WAS TO BRING THIS DIRECTIVE  
INTO COMPLIANCE WITH THE NATIONAL NUCLEAR SECURITY ADMINISTRATION.

**U.S. Department of Energy**  
**Washington, D.C.**

**ORDER**

**DOE O 442.1A**

Approved: 6-6-01

Review Date: 2-1-01

**SUBJECT: DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM**

1. OBJECTIVE. As a service to all Departmental Elements, the following will be to establish a Department of Energy (DOE) Employee Concerns Program (ECP) that ensures employee concerns related to such issues as the environment, safety, health, and management of DOE and the National Nuclear Security Administration (NNSA) programs and facilities are addressed through—
  - a. prompt identification, reporting, and resolution of employee concerns regarding DOE facilities or operations in a manner that provides the highest degree of safe operations;
  - b. free and open expression of employee concerns that results in an independent, objective evaluation; and
  - c. supplementation of existing processes with an independent avenue for reporting concerns.
2. CANCELLATIONS. DOE O 442.1, DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM, dated 2-1-99. DOE 5480.29, EMPLOYEE CONCERNS MANAGEMENT SYSTEM, dated 1-15-93. Current ECP's, implemented pursuant to DOE 5480.29, will remain in effect until superseded by revised programs implemented under this Order.
3. APPLICABILITY.
  - a. DOE Elements, including NNSA. Except for the exclusion in paragraph 3c, this Order applies to all DOE Elements.
  - b. Contractors. Except for the exclusions in paragraph 3c, the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements for management and operating and management and integration contractors of DOE-owned or -leased facilities.
  - c. Exclusions. Activities of the Naval Reactors Program conducted under Executive Order 12344 are excluded from this Order.
4. REQUIREMENTS.
  - a. ECP Criteria. The ECP must meet the following criteria.
    - (1) Possess interfaces with the following organizations:

**Distribution:**  
All Departmental Elements

**Initiated By:**  
Office Economic Impact and Diversity  
Office of Employee Concerns

- (a) other DOE, including NNSA and DOE contractor ECPs,
    - (b) external regulatory bodies that require employee concerns programs,
    - (c) Headquarters Office of Employee Concerns, and
    - (d) labor organizations, where applicable.
  - (2) Establish documented program plans describing methods and processes used to implement program requirements.
  - (3) Require that DOE, including NNSA and DOE contractor employees (i.e., any person working for a DOE contractor or subcontractor on a DOE project) be informed of the following:
    - (a) ECP process;
    - (b) employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP; and
    - (c) management's intolerance for reprisals against or intimidation of employees who have reported concerns.
  - (4) Provide and publicize a 24-hour hot-line (e.g., voice mail or e-mail system).
- b. Concerns Processing.
- (1) Concerns must be processed in one of the following manners:
    - (a) investigated or otherwise evaluated through the ECP, in coordination with DOE, including NNSA or external offices when required;
    - (b) referred to other offices or programs and tracked by the ECP until they are resolved (referral of a concern);
    - (c) transferred to another DOE or contractor organization with jurisdiction over the issues, when those issues are outside the scope of the ECP (transfer of a concern); or
    - (d) closed as prescribed in paragraph 4c.
  - (2) ECP personnel must document employee concerns in sufficient detail to permit investigation or other appropriate levels of review.
  - (3) Concerns must be tracked until closure.

- (4) Unless otherwise agreed to by the employee, an organization other than that of the employee's immediate supervisor must conduct the investigation. Similarly, individuals or organizations outside the concerned employee's organization should not be selected to conduct the investigation where their involvement presents a conflict of interest.
- (5) If the concerned employee requests confidentiality, his or her identity must not be disclosed during the investigation or other process used to evaluate the concern. However, ECP personnel should advise employees of the limitations of its ability to protect confidentiality under certain circumstances. For example, the concern may involve action taken against the employee for which relief is sought, or the employee may be closely associated with the concerns.
- (6) ECP personnel must evaluate and attempt to resolve employee concerns in a manner that protects the health and safety of both employees and the public, ensures effective and efficient operation of programs, and uses alternative dispute resolution techniques whenever appropriate.
- (7) ECP personnel must immediately report to an appropriate line manager (i.e., one with program, project, or health and safety responsibility) and/or the Environment, Safety and Health program office those concerns that involve an imminent danger or condition or a serious condition.
- (8) Appropriate offices (i.e., those with program, project, or health and safety responsibility) must determine whether DOE, including NNSA or its contractors have taken action to minimize, correct, or prevent recurrence of program, process, or management weaknesses identified and substantiated through the ECP.
- (9) Reports of concerns must be reviewed for classified information and, if classified, sanitized by an authorized classifier.

c. Closure.

- (1) An employee concern case is designated as closed when one of the following occurs:
  - (a) the concern has been investigated; necessary corrective actions have been identified (e.g., issuance of a non-conformance report); the office responsible for taking the corrective action has accepted jurisdiction over the matter; and the resolution has been documented in a formal tracking system;
  - (b) the concern has been investigated and no corrective action is deemed necessary;

- (c) the subject matter of the concern is outside the scope of the ECP and the concern has been transferred to another organization with jurisdiction over the subject matter;
  - (d) ECP personnel have advised an employee raising a concern that is outside the scope of the ECP of available means to have the concern addressed, if direct transfer of the concern to another organization is not appropriate (e.g., allegations subject to the Equal Employment Opportunity complaint process, claims for workplace injuries);
  - (e) the ECP determines that the issues are frivolous or too general to investigate; and
  - (f) the concerned employee has been notified that the concern has been closed.
- (2) If the ECP does not resolve a concern to the satisfaction of the concerned employee, the concerned employee must be advised if there are any offices with authority or responsibility for addressing the subject matter of the concerns.

d. Documents and Records.

- (1) At a minimum, the ECP office must prepare and maintain the following records:
- (a) concern log,
  - (b) concern reports,
  - (c) concern investigation and resolution summaries, including a description of the basis for closing the concern, consistent with paragraph 4c above;
  - (d) management assessment results, and
  - (e) quarterly and annual reports.
- (2) ECP personnel must submit quarterly and annual reports to the head of the field element and the Office of Employee Concerns. The reports must address the following:
- (a) employee concerns activity levels for the period,
  - (b) nature of the concerns,
  - (c) resolution of the concerns, and
  - (d) other information required under ECP directives for the effective coordination of ECPs.
- (3) In maintaining ECP records, steps must be taken to protect the identity of the concerned employee consistent with the employee's request for confidentiality and the provisions of the Privacy Act and the Freedom of Information Act.

- (4) Federal records cannot be destroyed unless authorized by the Archivist of the United States, National Archives and Records Administration (NARA). Authorities are found in the General Records Schedule of the Government, as issued by NARA, and in NARA-approved DOE records disposition schedules (Standard Forms 115). Should any or all ECP records not be “covered” by authorized records disposition schedule, the responsible ECP manager must seek NARA authorization (a records disposition schedule) through the cognizant local records officer in liaison with the Departmental Records Officer.
- e. Training and Qualification. Personnel responsible for implementing the ECP or investigating concerns must be trained to properly carry out their responsibilities (e.g., training on the identification and classification of health and safety issues, how to investigate workplace, and administrative issues and dispute resolution techniques).
- f. Management Assessment. The ECP manager must assess, at least annually, the effectiveness of the ECP and processes used to implement this Order. Problems that hinder the ECP from achieving its objectives must be identified and corrected.

5. RESPONSIBILITIES.

- a. Director, Office of Employee Concerns.
  - (1) Develops, promulgates, and maintains ECP directives.
  - (2) Assists DOE and contractor organizations in implementing ECP directives.
  - (3) Analyzes feedback provided by quarterly and annual ECP reports and site visits to DOE and contractor organizations to ensure ECPs are adequately implemented, best practices are shared, and related directives are improved.
  - (4) Decides which concerns that are brought to the attention of Office of Employee Concerns the office should seek to resolve, which warrant referral or transfer to another office for further review, or which warrant no further action.
- b. Secretarial Officers and Field Element Manager /NNSA Deputy Administrators.
  - (1) Designate the management position or positions responsible for developing and implementing the ECP.
  - (2) Direct the ECP and provide adequate resources and training for effective implementation.



- (3) Ensure implementation of ECPs required by contract for contractors under their jurisdiction.
- (4) Use management assessment results to verify the adequacy and implementation of the ECP and improve performance.

c. ECP Managers.

- (1) Develop and submit ECP program implementation documentation to the Secretarial Officer or field element manager, as appropriate, for approval.
- (2) Implement the approved ECP and ensure concerns are processed as required by this Order.
- (3) Publicize ECP processes, employee rights and responsibilities to report concerns through these processes, and management's intolerance for reprisals against employees who have reported concerns.
- (4) Maintain an employee concerns tracking system and a secure filing system.
- (5) Decide which concerns that are brought to the attention of the ECP the ECP office should seek to resolve, which warrant referral or transfer to another office for further review, or which warrant no further action.
- (6) Assist in evaluation and resolution of employee concerns.
- (7) Transfer concerns to other programs or processes if the concern is deemed to be outside the scope of the ECP. Review and evaluate responses from other organizations to which concerns were referred, request further action when necessary, and provide feedback to those organizations that have a need to know about the outcome of the ECP process.
- (8) Document that an individual, office, or organization has accepted responsibility for minimizing, correcting, and preventing recurrence of concerns that have been substantiated through the ECP process.
- (9) Prepare quarterly and annual reports and review them for lessons learned and possible adverse trends.
- (10) Use self-assessment or outside review to conduct management assessments of their ECPs. Assess the results with the Headquarters or field element manager, and take any necessary actions to improve program operations.

- (11) Coordinate with DOE contracting officers to determine the existence of contract requirements for the establishment of contractor ECPs and the means and criteria by which such contractor ECPs will be evaluated.
  - (12) Advise appropriate levels of management when actions are either ineffective or not timely in resolving concerns or correcting identified deficiencies.
- d. Assistant Secretary for Environment, Safety and Health (EH-1).
- (1) Acts as DOE's independent element responsible for safety aspects relative to public and worker health and safety, environmental protection, oversight of these areas and programs designed for the protection of special nuclear materials, classified information, and sensitive unclassified information.
  - (2) Advises and assists organizations in investigations of environmental, safety, and health concerns.
  - (3) Assesses and reports to the Secretary of Energy on safety-related activities conducted pursuant to this Order as part of assessments of safety-related performance of the Secretarial Offices, field elements, and contractors.
  - (4) As necessary, reviews proposed statutes, regulations, standards, and requirements for their application to and potential impact on DOE programs.
- e. Director of Human Resources Management.
- (1) Processes and resolves employee concerns/complaints filed under administrative and negotiated grievance procedures.
  - (2) Provides health services for Federal employees.

6. REFERENCES.

- a. DOE G 442.1-1, DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM GUIDE, which contains guidance on implementation of the ECP.
- b. Executive Order 12344, Naval Propulsion Act (44 U.S.C. 7158, note).
- c. Privacy Act of 1974, Public Law 93-579, 88 Stat. 1896 (5 U.S.C. 552a), as amended, which establishes laws to implement the Privacy Act.
- d. Freedom of Information Act of 1974, Public Law 93-502, 5 U.S.C. 552, as amended, which establishes law to implement the Freedom of Information Act..

- e. 10 Code of Federal Regulations, Part 708, DOE Contractor Employee Protection Program.
- f. 29 Code of Federal Regulations, Part 1960.28, Employee Reports of Unsafe or Unhealthful Working Conditions.
- g. 29 Code of Federal Regulations Part 24, Procedures for Handling Discrimination Complaints Under Federal Protection Statutes, which established the Department of Labor's procedures for investigating and adjudicating allegations of whistleblower reprisal under certain Federal statutes.
- h. Price-Anderson Amendments Act of 1988 (Pub. L. 100-49, August 20, 1988), implemented by DOE under 10 CFR Part 820.
- i. DOE O 440.1A, WORKER PROTECTION MANAGEMENT FOR DOE FEDERAL AND CONTRACTOR EMPLOYEES, which establishes the framework for an effective worker protection program by providing Federal and contractor workers with a safe and healthful workplace.
- j. P.L. 106-65, DoD Authorization Act of 2000, which statutorily establishes NNSA.

7. DEFINITIONS.

- a. Alternative Dispute Resolution. Process for resolving disputes through use of a neutral third party in an attempt to avoid judicial or administrative litigation. Forms of alternative dispute resolution include mediation, partnering, ombudsmanship, neutral evaluation, nonbinding arbitration, binding arbitration, and mini-trial.
- b. Conflict of Interest. A situation in which the person responsible for investigating an employee concern could be associated either directly or indirectly with that concern or an investigative task is assigned to a person who might have submitted the concern.
- c. Employee. Any person working for DOE, including NNSA or a DOE contractor or subcontractor on a DOE project.
- d. Employee Concern. A good faith expression by an employee that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address issues such as health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.
- e. Imminent Danger Condition/Concern. Any condition or practice in any workplace that creates a danger that could reasonably be expected to cause death or serious physical harm immediately or before the onset of such danger could be eliminated through the normal procedural mechanism.

- f. Intimidation. Any action taken by coworkers or supervisors against or toward an employee to cause that employee to cease engaging in protected activities; to be fearful of engaging in protected activities; to otherwise be afraid for his or her safety, reputation, or job security as a result of having identified concerns about any aspect of DOE facilities or operations.
  - g. Investigation. An inquiry conducted by or on behalf of an ECPs office for the purpose of evaluating and resolving a concern, usually involving interviews, inspection of relevant documents, sites, or equipment, and an evaluation of practices being followed.
  - h. Referral of a Concern. Transmittal of an employee concern to another organization or process for investigation or resolution, with the results of the investigation or resolution attempts being reported to the ECP manager within a specified time period with recommended resolution including corrective actions.
  - i. Reprisal. Any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about any aspect of DOE-related operations. Reprisals against contractor employees may lead to the imposition of penalties under the Price-Anderson Amendments Act of 1988 (Pub. L. 100-49, August 20, 1988), implemented by DOE under 10 CFR Part 820 (Part 820). Pursuant to Part 820, to the extent a reprisal by a DOE contractor results from an employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity, the reprisal could constitute a violation of a DOE Nuclear Safety Requirement.
  - j. Resolution of a Concern. Actions taken and decisions made in response to an employee concern by verifying the concern, establishing plans to correct identified deficiencies, correcting the deficiencies, or determining that the concern is not substantiated and no corrective action is required.
  - k. Transfer of a Concern. Communication of a concern by the ECP office to an office with subject-matter responsibility or expertise pursuant to which that office will address the concern with the concerned employee.
8. CONTACT. Office of Economic Impact and Diversity, Office of Employee Concerns, 202-586-6530.

BY ORDER OF THE SECRETARY OF ENERGY:



FRANCIS S. BLAKE  
Deputy Secretary

## **ATTACHMENT 1**

### **CONTRACTOR REQUIREMENTS DOCUMENT**

#### **DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM**

In support of the effective implementation of the Department of Energy (DOE) Employee Concerns Program (ECP), contractors are required to—

- assist DOE in the resolution of employee concerns in a manner that protects the health and safety of both employees and the public and ensures effective and efficient operation of DOE-related activities under their jurisdiction;
- ensure that contractor and subcontractor employees are advised that they have the right and responsibility to report concerns relating to the environment, safety, health, or management of DOE-related activities; and
- cooperate with assessments used to verify that they have acted to minimize, correct, or prevent recurrence of the situation that precipitated a valid concern.

**ATTACHMENT B**  
**OCP Poster**

# Do you have a concern?

- **OCRWM Concerns Program**
  - ▲ 24-hour hotline at 1-848-4CONCERN
  - ▲ OCP Office in Building 10, Suite 140
- **BSC Employee Concerns Program**
  - ▲ 24-hour hotline at 1-848-4CONCERN
  - ▲ ECP Office in Building 10a, Suite 170
- Submit concerns to either Concerns Program:
  - ▲ Mail at internal office or regular post
  - ▲ OCRWM or BSC intranet
  - ▲ Drop boxes located throughout the Project



In Las Vegas  
call



OCRWM Concerns: 295-2566  
BSC ECP: 838-6420

**ATTACHMENT C**  
**Confidentiality Form**



TO: OCRWM Concerns Program

FROM: \_\_\_\_\_

SUBJECT: ACKNOWLEDGMENT OF AGREEMENT OF CONFIDENTIALITY  
FOR PARTICIPATION IN OCRWM CONCERNS PROGRAM  
ACTIVITIES

I, \_\_\_\_\_, acknowledge and fully understand that all of my activities associated with the OCRWM Concerns Program (OCP) are to be handled in a *CONFIDENTIAL* manner. In this respect, I agree that I will not disclose any information relative to the identity of the individuals who contact the OCP with specific issues to anyone outside the immediate OCP staff without the OCRWM Concerns Program Manager's permission.

In addition, information related to either the details of a specific concern or to the status information on the progress of a specific investigation shall not be divulged to any individual outside the immediate Concerns Program staff unless I have received authorization from the OCRWM Concerns Program Manager.

I understand that any violation of this agreement will be referred to management within my respective organization for appropriate action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT D**  
**Confidentiality Statement**

**U. S. DEPARTMENT OF ENERGY**  
**Office of Civilian Radioactive Waste Management Concerns Program**  
**Confidentiality Statement**

Attachment D

OCP Case Number O-05-

I have information I wish to provide in confidence to the Office of Civilian Radioactive Waste Management Concerns Program (OCP). Consistent with legal obligations, OCP adheres to the following conditions:

- OCP will protect my confidentiality to the extent allowed by law.
- OCP will consider me to have waived confidentiality if I take or have taken any action that may be inconsistent with the granting of confidentiality [e.g., any action that could reasonably be expected to disclose my identity or I have engaged in misconduct that is connected to my concern(s)].

I understand that OCP is not an advocate for me or my employer, rather OCP is an advocate for resolution.

I agree that OCP has a duty to act in an expedient manner on matters that involve: imminent hazard situations; allegations of harassment, intimidation, retaliation or discrimination resulting from the engagement in protected activity; or potential violations of law.

Consistent with maintaining the confidentiality requested, OCP agrees to:

- Take reasonable steps to ensure my identity as the source of the information is not compromised;
- Notify me of the proposed path forward for investigation or inquiry (e.g., referrals, transfers, non-investigation resolution) and the resolution of this concern;
- Notify OCRWM executive management of the existence of this concern, but not my identity (without my permission); and
- Notify me if, in the course of the investigation or inquiry, my confidentiality can no longer be preserved.

I request the following level of confidentiality		Employer Communication	
<input type="checkbox"/> <b>Confidentiality Waived:</b>  (CI initials)	<input type="checkbox"/> <b>Confidentiality Requested:</b>  (CI initials)	<p>I understand that by filing this concern no special rights or privileges are granted to me. However, if my employer has proposed taking an adverse action against me, I agree the OCP Manager may communicate with my employer regarding this concern to review whether the proposed adverse action is being taken as a result of raising a concern.</p> <p><input type="checkbox"/> YES (CI initials)                      <input type="checkbox"/> NO (CI initials)</p>	

\_\_\_\_\_  
Concerned Individual Signature

\_\_\_\_\_  
Date

Name (Print): \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City, ST Zip: \_\_\_\_\_ Home: \_\_\_\_\_

Position: \_\_\_\_\_ Work: \_\_\_\_\_

Employer: \_\_\_\_\_ Cell: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Dept: \_\_\_\_\_

Telephone: \_\_\_\_\_

# **ATTACHMENT E**

## **NRC Inspection Manual**

# NRC INSPECTION MANUAL

PIPB

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## INSPECTION PROCEDURE 40001

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### RESOLUTION OF EMPLOYEE CONCERNS

PROGRAM APPLICABILITY: IMC 2515

SALP FUNCTIONAL AREA: OTHER

#### 40001-01 OBJECTIVE

To assess the licensee's process for resolving safety-related concerns reported by licensee or contractor employees while preventing any retaliatory action against those employees.

#### 40001-02 INSPECTION REQUIREMENTS

NOTE: Implementation of this inspection procedure requires the approval of the appropriate Regional Administrator.

##### 02.01 Inspection Preparation

- a. Allegation History. Review the allegation history of the site before performing the inspection. Determine any positive or negative aspects of the licensee's handling of allegations. The inspection should include concerns that are the subject of allegations reviewed by the NRC as well as concerns that were not submitted to the NRC.
- b. Process for Resolving Concerns. Review procedures that govern the licensee's Employee Concerns Program (ECP) and focus on the information flow process. Review the licensee's process for receiving, evaluating, dispositioning, tracking and documenting concerns. This review should be based on the licensee having an ECP in place and the pertinent procedures being available to the inspector. The inspector should conduct this review before the inspection.
- c. ECP Organization. Review whether the licensee's process for resolving concerns ensures a suitable level of independence between the ECP and line organizations.

02.02 Assessment of the Licensee's Process for Resolving Employee Concerns. On the basis of available documents and data, assess the overall performance of the licensee by focusing on the

licensee's effectiveness in (1) processing and resolving safety-related concerns and (2) protecting from retaliation those employees who raise concerns.

- a. Documentation of Concerns. Examine safety-related concerns reported by employees within the last 2 years. Assess pertinent documentation of the receipt, review, and closure of each safety-related concern selected for this examination. This review should assess the technical adequacy of the licensee's review and closure of the concerns.

NOTE: Any allegations brought to inspectors by employees during the inspection should be forwarded to the regional office allegation coordinator (OAC) for processing through the NRC allegation review process. At no time during the NRC review should the confidentiality of any employee be jeopardized.

- b. Corrective Actions. Assess the adequacy of corrective actions associated with the closure of selected safety-related concerns. Contact the appropriate employees to discuss their satisfaction with the adequacy of the corrective actions.

NOTE: Discussions with employees should be held only if employees voluntarily agree to discuss their concerns with the NRC. Inspectors should expend maximum effort to protect the identity of those employees contacted including contact by phone and/or offsite meetings.

- c. Prioritization of Concerns. Assess whether concerns are prioritized on the basis of safety significance.
- d. Feedback to Employees. Assess the adequacy and timeliness of feedback to employees regarding the review and resolution of their concerns. Contact appropriate employees to discuss their satisfaction with the feedback process regarding their concerns.
- e. Independent ECP Staff Review. Assess the ability of the licensee's staff administering the ECP to impartially review, track, disposition, and record concerns independent of the employee's line organization.
- f. Environment for Reporting Concerns. Assess if and how the licensee publicizes the ECP as an avenue for employees to report concerns when they are reluctant to report them to their line organization. Assess how employees are assured that confidentiality will be preserved, if they wish to maintain confidentiality. Evaluate how all employees, including new employees, are made aware of procedures that govern accessibility to, reporting concerns to, and implementation of the ECP. Assess whether departing or dismissed employees are debriefed regarding any remaining concerns.
- g. Protection Against Retaliation. Determine whether sufficient controls are in place to protect those employees who identify concerns from any type of retaliatory action. Ascertain whether management supports measures to ensure achievement of that end. Contact appropriate employees to discuss their

satisfaction with the protection against retaliation afforded to them by the ECP and licensee's management.

- h. Expertise of ECP Staff. If problems with the handling of concerns are identified, assess whether the ECP staff can promptly respond to and correctly resolve a variety of concerns. Evaluate the extent of the ECP staff's reliance on line organizations and consultants. Determine whether training is provided for all personnel involved in the handling of concerns.
- i. Self-Assessment. Evaluate the licensee's monitoring and auditing of the ECP by internal and external organizations, and determine whether lessons learned are provided as feedback to management.

02.03 Reporting. Identify any negative findings about the licensee's processing and reporting of concerns to NRC management before the final exit interview with the licensee. Determine whether more extensive followup review should be performed or if more issues should be forwarded to the OAC. Keep NRC management informed of significant adverse findings.

40001-03 GUIDANCE

#### General Guidance

An ECP is an avenue independent of the line management process for licensee and contractor employees to report safety concerns to their employers without fear of retaliation. NRC regulations do not include specific guidance or requirements for the establishment of an ECP. The applicable regulatory requirement in Section 50.7 of Title 10 of the Code of Federal Regulations (10 CFR 50.7) and in the Energy Reorganization Act, Section 211, is not to impede or hinder the reporting of safety-related concerns by employees of licensees or contractors and subcontractors. To the extent that safety-related concerns are being dispositioned through the ECP, evaluation of the process falls under 10 CFR Part 50, Appendix B, Criterion XVI.

Some licensees have well-established ECPs, while others have none at all. The ECPs in existence do not adhere to one universal format and range from those lacking formality to those that are very well defined. Increased NRC interest in this area resulted in the development of Temporary Instruction 2500/028, "Employee Concerns Program," in 1993 and the modification of Inspection Procedure 40500, "Effectiveness of Licensee Controls in Identifying, Resolving, and Preventing Problems," Section 03, to aid inspectors in reviewing licensee programs for the phenomenon known as the "chilling effect" (a term that refers to the negative effect a hostile environment may have on employees raising concerns to the NRC or on those who may want to raise concerns).

This inspection procedure should be used to assess whether a licensee has adequately resolved safety-related employee concerns without retaliation against those employees who raise concerns.



Inspectors are directed not to attempt to enforce the programmatic elements presented in this inspection procedure. Any problems identified concerning a licensee's processing of concerns are to be reported as observations. Inadequate resolution of concerns should be evaluated for impact on plant safety, if time permits. If time does not permit evaluation, the licensee and NRC management should be informed of the staff's concerns with the licensee's resolution. Allegations received by inspectors during the review should be forwarded to the regional OAC, as appropriate.

### Specific Guidance

03.01 Inspection Preparation. Determine whether the licensee is responsive and sensitive to those issues that employees believe could affect the safe operation or shutdown of a nuclear facility or endanger the health and safety of the public. These attributes can be determined in part by assessing whether a licensee's ECP comprises programmatic elements that ensure a responsive, effective operation. The inspector should review ECP procedures and data and submit pertinent questions to the licensee before the site inspection.

- a. Allegation History. In reviewing the allegation history, determine the number of technical and wrongdoing (e.g., harassment, intimidation, discrimination) employee concerns reported to the ECP staff and allegations reported to the NRC over the last 2 years. Compare the number of technical and wrongdoing concerns or allegations received by the ECP staff with those received by the NRC for the last 2 years and note any parts of the organization that reported concerns to the NRC but not to the ECP staff.
- b. Process for Resolving Concerns. In reviewing the licensee's ECP procedures, determine whether the following programmatic elements are present:
  - Corporate policy disseminated on employee concerns and protection of employees against retaliation.
  - Information on how licensee and contractor employees can access the ECP.
  - Methods for reporting concerns (e.g., in person, mail, fax, telephone).
  - Assurance of employee confidentiality.
  - Measures to protect employees from retaliation.
  - Assignment of staff independent from line organizations for fair and impartial evaluation of employees concerns.
  - Methods for prioritization, evaluation, tracking, resolution, documentation and feedback regarding employee concerns exist and are adhered to while concerns are being resolved.
- c. ECP Organization. Ascertain whether the ECP organization is independent of line organizations and whether the ECP staff is competent. Determine the ECP manager reporting chain and whether:

- The ECP staff is responsible for investigating, evaluating, tracking, and resolving each concern, and guidance is provided on when and how ECP staff can call on other sources of expertise.
- Qualifications of ECP counselors and investigators are established.

03.02 Assessment of the Licensee's Process for Resolving Employee Concerns. Select a minimum of 10 and maximum of 20 safety-related employee concerns and evaluate the licensee's (1) processing and resolving safety-related concerns and (2) protecting from retaliation those employees who raise concerns.

NOTE: This assessment should be done by interviewing ECP staff, reviewing applicable ECP files, and, where necessary, conducting employee interviews.

a. Documentation of Concerns. Review ECP files (files containing records of employee concerns) for selected safety-related concerns, and determine whether:

- All safety concerns are formally documented (not resolved on the phone).
- Controls exist requiring records of pertinent conversations and meetings.
- Sufficient detail is documented to determine the safety impact of the concern, where possible.
- Sufficient records exist on the processing of the concern, including records on receipt of concern, interviews, assignment to staff, summaries of telephone conversations, resolution, and feedback to the employee.
- Records are maintained in an officially designated secure location accessible only to internal auditors, ECP staff, and authorized management.

b. Corrective Actions

- Perform an independent review of the adequacy of corrective actions associated with the closure of selected safety-related concerns. Contact appropriate employees, particularly when a concern does not appear to have been adequately resolved, to discuss their satisfaction with the closure of their concerns. Focus on the following:
  - Review selected corrective actions to determine whether licensee actions committed to in response to employee concerns were adequate.
  - Determine whether employees voicing safety-related concerns believe the corrective actions addressed the identified concerns.
- Perform an independent review of the adequacy of the licensee's resolution of a sample of the concerns selected for review. Focus on the following:

- Did the licensee investigate and resolve each issue raised by the employee.
  - Was the scope and depth of the licensee's review adequate to address the questions raised.
  - Was the licensee's review timely given the safety significance of the issue and the operating status of the plant.
- c. Prioritization of Concerns. Determine whether concerns are screened and assigned priorities on the basis of safety significance. Determine whether issues of the highest safety or organizational significance receive the highest priority.
- d. Feedback to Employees. Determine whether adequate and timely feedback is provided to employees raising concerns to the ECP staff. Focus on the following:
- formal acknowledgement of receipt and specific details of the concern
  - interim status of review of concern
  - results of review and resolution of concern
- e. Independent ECP Staff Review. Determine whether the ECP staff provide an impartial and independent review the employees' concerns (independent of the employee's line organization) and whether ECP procedures provide formal guidance for accomplishing an independent review of employees' concerns. Lack of guidance could result in employees obtaining opinions or resolutions from individuals in the line organization that the employees did not agree with in the first place.
- f. Environment for Reporting Concerns. During discussions with ECP staff and employees, determine:
- Whether employees are encouraged to report concerns.
  - Whether information provided (e.g., purpose and function of the ECP, procedures governing its operation, and persons who have access to it) is consistent.
  - To whom and how to raise a concern.
  - Whether the ECP is independent.
  - Whether confidentiality of employees is maintained.
  - Whether first-line through senior management endorses and supports the ECP.
  - Whether employees understand the accessibility, confidentiality, and protection against retaliation provided by the ECP.
  - Why certain parts of the organization (on the basis of allegation history) choose to report concerns to the NRC but not the ECP staff.

CAUTION: If, during your review of the licensee's allegation history, you find that the licensee has pending harassment, intimidation, or discrimination case(s)

before either the Department of Labor (DOL) or NRC's Office of Investigations, do not document a finding of "no chilling effect" as a result of your inspection. Similarly, if the licensee has recently been issued a Notice of Violation by the NRC, or been found liable by a final DOL adjudicative body for violations pertaining to harassment, intimidation, or discrimination, a finding of "no chilling effect" should not be issued. If you are unclear or not certain about the meaning of specific issues identified in the licensee's files, you should consult with the NRC Regional Office Allegation Coordinator (OAC) for guidance before reaching any inspection findings.

- g. Protection Against Retaliation. Determine whether the licensee's or contractor's employees are encouraged to report safety-related concerns without fear of retaliation; also, whether:
- No retaliation is permitted.
  - Employees are informed that the ECP is an acceptable alternative method for raising safety concerns and that its use by co-workers is not to be viewed negatively.
  - Control measures or policies are implemented.
  - Formal controls exist to inform senior management of instances of reported retaliation.
  - Management supports measures and becomes involved in the resolution of concerns.
  - Each concern is treated as legitimate unless proven otherwise.
  - How individual confidentiality is maintained, including confidentiality of those entering or leaving the ECP office.
  - Employees requesting confidentiality are alerted that despite the ECP's efforts to protect their identity, the narrow focus of their concern could potentially cause their identity to be revealed.
  - The ECP staff hours accommodate employees' schedules and flexibility for offsite interviews is considered.
  - An "appeal process" has been implemented to preserve the affected employee's protected activities and personal remedies.
- h. Expertise of ECP staff. Examine the training of ECP and plant staff by reviewing training records and lesson materials. Determine whether:
- The ECP staff receives training on how to conduct investigations and interviews of employees while protecting their confidentiality.
  - First-line management receives training on handling concerns and are required to meet an established training grade.
  - All levels of management receive training on "lessons learned."

- All plant staff receive initial indoctrination and periodic refresher training on the basic concepts and purpose of the ECP.
  - Management receives training on how to foster an atmosphere that encourages employees to readily express their concerns.
- i. Self-Assessment. In determining how effectively management and the ECP staff oversee the ECP, review the following:
- Monitoring and auditing of the effectiveness of the ECP by internal and independent review organizations.
  - Encouragement and evaluation of employee feedback.
  - Dissemination of the results to management and the staff.
  - Assessment of employee satisfaction with reporting safety concerns to the ECP.

03.03 Reporting. Safety-significant inspection findings should be promptly identified to the appropriate regional management and, if appropriate, the OAC, for consideration of followup action. Significantly adverse findings should also be discussed with appropriate NRR management.

#### 40001-04 RESOURCE ESTIMATE

Approximately 60-80 hours of direct inspection effort (preparation and site effort) will be necessary to complete this inspection procedure. Actual inspection at a specific plant may require more or less time depending on plant-specific issues.

#### 40001-05 REFERENCES

10 CFR 50.7, "Employee Protection"

Energy Reorganization Act of 1974, Section 211, "Employee Protection"

END

**ATTACHMENT F**  
**SCWE Pillars Poster**

