

Independent Oversight Review of the Employee Concerns Program at the Savannah River Operations Office



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Acronyms

ADR	Alternative Dispute Resolution
CFR	Code of Federal Regulations
CI	Concerned Individual
CRAD	Criteria, Review and Approach Document
CY	Calendar Year
DOE	U.S. Department of Energy
DOE-SR	Department of Energy Savannah River Operations Office
ECP	Employee Concerns Program
EEO	Equal Employment Opportunity
ES&H	Environment, Safety, and Health
HSS	Office of Health, Safety and Security
IG	Inspector General
OCR	Office of Civil Rights
OFI	Opportunity for Improvement
OSQA	Office of Safety and Quality Assurance
RP	Reprisal Complaints
SRIP	Savannah River Implementing Procedure
SRS	Savannah River Site
SME	Subject Matter Expert

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1.0 PURPOSE

The U.S. Department of Energy (DOE) Office of Enforcement and Oversight (Independent Oversight), within the Office of Health, Safety and Security (HSS), conducted an independent review of the employee concerns program (ECP) at the DOE Savannah River Operations Office (DOE-SR). The review was performed by the HSS Office of Safety and Emergency Management Evaluations. The purpose of this Independent Oversight targeted review was to evaluate DOE-SR processes and their implementation for addressing safety concerns reported by DOE, contractor, and subcontractor employees at the Savannah River Site (SRS).

This targeted review was performed at SRS from June 3 to 5, 2013. This report discusses the background, scope, methodology, results, and conclusions of the review, as well as opportunities for improvement (OFIs) and findings identified during the review.

2.0 BACKGROUND

The independent oversight program is designed to enhance DOE safety and security programs by providing DOE and contractor managers, Congress, and other stakeholders with an independent evaluation of the adequacy of DOE policy and requirements, and the effectiveness of DOE and contractor line management performance in safety and security and other critical functions as directed by the Secretary. The independent oversight program is described in and governed by DOE Order 227.1, *Independent Oversight Program*, and a comprehensive set of internal protocols, operating practices, inspector guides, and process guides.

Independent Oversight evaluates safety policies and programs throughout DOE with a particular emphasis on evaluating the protection of workers and the public from nuclear hazards. Its mission includes a program of targeted reviews that evaluate selected functional or topical areas at DOE sites. Review activities are selected, prioritized, and planned based on such factors as risks to workers, regulatory or DOE directive requirements, facility operational status, and performance history.

DOE Order 442.1A, *Department of Energy Employee Concerns Program*, details the objective and requirements for a DOE and National Nuclear Safety Administration program that ensures that employee concerns related to environment, safety, and health (ES&H) issues are addressed through:

- Prompt identification, reporting, and resolution of concerns regarding DOE facilities or operations in a manner that provides the highest degree of safe operations
- Free and open expression of employee concerns that results in an independent, objective evaluation
- Supplementation of existing processes with an independent avenue for reporting concerns.

DOE Order 442.1A specifies the responsibilities for field element managers and designated ECP managers necessary to establish and implement an effective ECP and oversight of contractor ECPs and support of the field element ECP.

In accordance with DOE Order 442.1A, HSS is to assess and report to the Secretary of Energy safety-related activities conducted pursuant to the DOE order as part of its assessment of safety-related performance of DOE field elements and contractors.

3.0 SCOPE AND METHODOLOGY

Independent Oversight evaluated the adequacy and effectiveness of the DOE-SR ECP, using elements of HSS Criteria, Review and Approach Document (CRAD) 54-21, Rev. 1, *Feedback and Continuous Improvement Inspection Criteria and Approach–DOE Field Element*, to collect and analyze DOE-SR ECP data. Specifically, Independent Oversight used the following CRAD criterion and associated lines of inquiry: “An effective employee concerns program has been established and implemented in accordance with DOE O 442.1A, *DOE Employee Concerns Program*, which encourages the reporting of employee concerns and provides thorough investigations and effective corrective actions and recurrence controls.” The team reviewed Savannah River Implementing Procedure (SRIP) 400, Chapter 442.1, Rev. 2 (December 2011), *DOE-SR Employee Concerns Program* (hereafter referred to as the DOE-SR ECP procedure or SRIP Procedure 442.1); “advertising” and training materials; status reports; self-assessments, contractor assessments, and DOE-SR assessments of contractor ECPs; and casefile records of a sample of concerns received in calendar years (CYs) 2011, 2012, and 2013. The designated ECP Manager and ECP Specialist were interviewed.

Independent Oversight restricted its sample of concern cases to those involving direct or inferred involvement with ES&H issues. As defined in the DOE order and the associated DOE Guide 442.1-1, *Department of Energy Employee Concerns Program Guide*, and in the DOE-SR ECP procedure, employee concerns can be referred to other organizations for investigation and disposition if they would be more appropriately managed by others (within the DOE organization, other contractors, or other programs). Final disposition and casefile documentation for concerns that are referred remain the responsibility of the referring organization. Concerns that are not within the jurisdiction of the ECP (e.g., equal employment opportunity (EEO) complaints, waste/fraud/abuse concerns, collective bargaining issues) are logged and closed but are formally transferred to the appropriate organizations, which are then responsible for investigation, disposition, and closure of those concerns. Concerns that were within the DOE-SR ECP purview but referred to SRS contractor ECPs were also included in the sample of casefiles reviewed by Independent Oversight.

Independent Oversight did not re-perform investigations and did not make judgments as to the accuracy of the final disposition of the concern cases reviewed, but only determined whether the investigations were adequately documented and whether dispositions were sufficiently justified by the documentation. Due to confidentiality concerns, specific details regarding weaknesses in individual cases are not included in this report, but were discussed with the DOE-SR ECP Manager and Specialist. Positive attributes and weaknesses in process and implementation identified during the review are discussed in Section 4.0.

4.0 RESULTS

DOE-SR has limited staffing to administer the ECP. The designated ECP Manager at DOE-SR is the Director of the Office of Civil Rights (OCR), and the designated ECP Specialist has collateral OCR duties. An EEO Specialist in OCR who has some training in ECP is also available to work on concern cases as a collateral duty. The DOE-SR ECP applies to all DOE-SR Federal staff, and any DOE, contractor, or subcontractor employee working at SRS may report concerns to DOE-SR for processing in accordance with the DOE-SR ECP. The ECP has established a 24-hour telephone Hotline that is usually answered by ECP staff during normal working hours and provides an appropriately informative recorded message about reporting concerns when no one is available to answer the phone. The ECP staff checks the Hotline voice mailbox for new concern messages every workday morning.

The availability and purpose of the ECP are well advertised through posters on site-controlled bulletin boards throughout the site, which include Hotline and other DOE-SR and contractor ECP contact

information, and through new employee and annual employee refresher training. In addition, the Senior Technical Safety Manager training course at DOE-SR includes a module on the ECP presented by the ECP Specialist. The OCR intranet homepage and the “programs” link from the DOE-SR homepage contain links to two different ECP web pages that contain summary process descriptions and contact information. However, both ECP websites contain outdated information. The OCR webpage lists contact phone numbers for previous contractors and only has contact information for one of the current SRS contractors. In addition, although this website has the correct Hotline phone number, it cites the wrong phone number for the ECP office. Similarly, the DOE-SR program’s ECP website does not provide current contact information for SRS contractor ECPs. (See **OFI-1**.)

Concerns reported to the DOE-SR ECP are screened by the ECP Specialist for significance (e.g., imminent safety hazards) and assigned a priority number from I (imminent danger) to IV (routine) and a tracking number. (See discussion under ECP Procedure and Processes and ECP Implementation, below.) Concerns reported to the ECP can be dispositioned in several ways. The ECP Specialist often suggests alternative dispute resolution (ADR) to work out a mutually agreeable resolution. The ECP Specialist also counsels contractor employees on the use of the complaint process detailed in 10 CFR 708, Subpart B, *DOE Contractor Employee Protection Program*, commonly call the “whistleblower” statute, for cases of reprisal for reporting concerns about protected activities to DOE, a member of Congress, or other responsible government official. (See discussion of weaknesses in the implementation of this process under ECP Implementation, below.)

Concerns can be investigated and dispositioned by the ECP staff or transferred or referred to other organizations (e.g., contractor ECPs) for investigation and resolution. As prescribed in DOE Order 442.1A and SRIP Procedure 442.1, concerns are transferred when the issue is outside the jurisdiction of the ECP (e.g., EEO, waste/fraud/abuse, labor relations, workmen’s compensation, or law enforcement issues). When concerns are transferred, the full responsibility for management, resolution, and closure of the concern is assumed by the organization receiving the transfer. For referrals, the referral organization conducts an investigation, proposes resolution within a specified timeframe, and reports this information back to the DOE-SR ECP for final disposition and closure. Although the practice of referring concerns is authorized and discussed in the DOE ECP order and guide and in the DOE-SR ECP procedure, none of these documents provides any criteria, examples, or other guidance on when concerns can or should be referred. In practice, cases are generally referred to the DOE-SR Office of Safety and Quality Assurance (OSQA) for investigation by appropriate subject matter experts (SMEs) or to contractor ECPs, if it is deemed that they would be most effective in resolving the issue and there is no conflict of interest. Sixty concerns were assigned tracking numbers and closed by the DOE-SR ECP in CY 2011, 2012, and 2013. These concerns included issues related to ES&H, workplace violence, harassment/retaliation/reprisal for reporting ES&H issues, EEO, wrongful termination, and waste/fraud/abuse issues. Approximately 33 of these concerns were either directly related to ES&H or had apparent ES&H-related aspects. Five of the ES&H-related concerns were transferred or closed because they were judged to be outside ECP jurisdiction, 10 concerns were settled or dismissed using the 10 CFR 708 complaint process, and 16 were investigated and dispositioned by DOE. Few concerns reported to the DOE-SR ECP were investigated directly by ECP staff.

Specific information related to the reported concern and the management of its disposition (e.g., priority classification, status, referral/transfer organizations and responsible personnel, and a chronological log of actions and events) is entered into a computerized database. The database information, along with related correspondence, investigations details, and completed forms, is compiled and maintained in hard copy casefiles. Casefiles are appropriately stored in locked, fireproof cabinets in a locked room in DOE Building 730-B.

ECP Procedure and Processes

DOE-SR issued policy statement SRP 10-08 in June 2010 to communicate DOE-SR's commitment to ensuring the protection of employees, the public, and the environment through the mechanism for employees to report safety concerns. The policy document provides a summary description of the formal ECP, including contact information, as well as alternative means for reporting and resolution of concerns. It communicates the prohibition of retribution, reprisal, or intimidation of employees for reporting ES&H issues.

The processes and requirements for the DOE-SR ECP are contained in SRIP Procedure 442.1, which describes the purpose and scope of the ECP and lists the responsibilities of DOE-SR managers and supervisors (including the ECP Manager), the ECP Specialist, the DOE-SR Office of Chief Counsel, the assigned investigators/SMEs, and DOE-SR employees. The procedure provides general information about reporting concerns, such as the fact that resolving concerns with supervision or in-house ECPs is preferable; reiterates the DOE-SR policy regarding retaliation, reprisal, and intimidation; defines anonymity and confidentiality; and discusses ADR. The procedure specifies that ECP staff are required to be trained to properly carry out their duties, including classifying ES&H issues, conducting investigations, and using ADR techniques. It also specifies that other DOE-SR persons doing investigations (e.g., SMEs in OSQA) are provided training by the ECP Specialist. The ECP staff members are required to attend at least two training sessions annually that are pertinent to carrying out ECP functions. Process steps within the procedure describe the initiation and reporting of concerns by employees and supervisors and the ECP Specialist's processing of reported concerns, which includes identifying the method for resolution, conducting or reviewing investigations, coordinating resolution actions, closing the concern, and communicating with the concerned individual (CI). Concerns reported to the DOE-SR ECP are documented on a report form (Form 230) available on the DOE-SR intranet. SRIP Procedure 442.1 has a link to this form and also includes a table of targeted timeframes for completing various ECP process activities to promote timely processing and resolution of concerns. An attachment provides guidance on the procedure for referring or transferring a concern and for conducting and documenting an investigation report.

Although SRIP Procedure 442.1 includes most of the information needed to implement an ECP, it is poorly organized, many of the elements lack needed information or contain incorrect information, and roles and responsibilities for performing many elements of concern management are not sufficiently defined. Some of the specific weaknesses and deficiencies in this procedure include: (See **OFI-3** and **Finding 1**.)

- **Procedure 442.1 does not always follow a logical process flow that supports effective management of concerns.** For example, in Section 7.4, steps 5 through 14 discuss the investigation process steps for concerns, but Section 7.6 is titled "Investigating Employee Concerns" and contains numerous additional action steps related to concern investigation. There is no linkage or distinction between these two sections. Although Section 7.5 is titled 10 CFR 708, Subpart B, "Employee Complaint Resolution Process" and includes 10 CFR 708 process information in Section 7.5.1, Sections 7.5.2 through 7.5.6 describe the process for managing concerns that are referred to other organizations. The procedure section titles and text do not sufficiently identify when sections or steps apply to concerns reported by DOE personnel or contractor/subcontractor personnel, or both.
- **Not all roles, responsibilities, and authorities and position titles are adequately defined or included in action steps.** For example, the Director of the OCR is assigned responsibilities of the ECP Manager but is not designated as the ECP Manager. Persons designated as "ECP Collateral Duty Investigators" are assigned responsibilities, but there is no definition of who they are. The responsibility designated for Collateral Duty Investigators is to investigate Priority Level III and IV

concerns, and a responsibility of SMEs is to investigate Priority Level I and II concerns; however, there is no reference to Priority Levels in the action steps of the procedure and no explanation as to why each category of investigator works on different levels of concerns. A group called the Employee Concerns Review Panel is defined and the ECP Specialist is assigned responsibilities to select panel members, but this panel is not referenced in any action steps. Although the procedure specifies that a responsibility of the ECP Specialist is to train ECP Collateral Duty Investigators, there is no requirement for, or action steps related to, this responsibility and no evidence in casefiles that it is done. Throughout the action sections of the procedure, the person(s) or organization responsible for performing individual steps or sections is not identified, and the personal pronouns “you” and “your,” referring to the CI, are inappropriately used. The procedure states that the ECP Specialist may propose an informal resolution to the CI to be documented in the ECP Report Tracking System (undefined in the procedure), but there is no description or example of what constitutes an informal resolution.

- **The procedure does not adequately define and provide examples of what concerns are within the ECP’s jurisdiction, including what concerns should not be referred and what qualifiers apply to transfers (cases where the transferring ECP has no responsibility for further investigation or disposition).** The procedure provides general examples of exceptions to ECP jurisdiction but does not specify what types of concerns, or parts of concerns, are still required to be managed by the ECP. For example, as noted in the “Objective” section of DOE O 442.1A, the ES&H aspects (and their investigation and resolution) would fall within the ECP’s jurisdiction when union or Human Resources issues that are appropriately transferred to other organizations for resolution have ES&H-related elements, or when a CI reports retaliation concerns on a 10 CFR 708 complaint but indicates that ES&H issues remain unresolved. Independent Oversight notes that the DOE order and guide also do not sufficiently define or provide examples of case types that are within or not within ECP jurisdiction.
- **The procedure does not sufficiently identify the need, means, or scope for communicating the ECP’s expectations for the conduct and reporting of investigations that are referred to other organizations.** For referrals, especially to other DOE-SR organizations, investigations may likely be conducted by personnel with less training and experience in managing employee concerns, including the need for maintaining confidentiality and communicating with the CI as necessary.
- **The procedure does not sufficiently define mechanisms to ensure that employee concerns are documented in a manner that fully and accurately describes the employee’s issues as needed to facilitate an effective investigation and resolution.** The procedure does not detail expectations for ECP staff to engage the employee during the intake process to clarify the concerns, solicit specific examples, and obtain employee concurrence with any restatements of the concerns. The procedure addresses the use of the ECP Report Form 230 but not the process for completing and signing the form. Fully described concern statements are especially important when concerns are referred to another organization. (See the following section for details of implementation problems in concern descriptions and documentation.) Various forms used in the administration of the concerns process and contained in casefiles reviewed by Independent Oversight (e.g., casefile checklist, chronological log, referral organization/staff conflict of interest statement, and a confidentiality disclosure/non-disclosure form) are not referenced in the procedure.
- **Other miscellaneous errors and omissions were noted in the procedure.** For example, incorrect phone numbers for the ECP office are listed on pages 18 and 19 and incorrect steps are referenced on page 25, and several times on page 22. Sections 7.4 (Processing Employee Concerns) and 7.7 (Resolving Employee Concerns) appear to apply to concerns reported by DOE personnel because

there are numerous references to the “PDO” or Primary Division Office in DOE-SR, but that limitation on applicability is not directly indicated, and no corresponding section on resolving employee concerns reported by contractors or subcontractors. Step 7.3.5.E states that one of the methods the ECP Specialist can use to process a concern is to “Close the EC [employee concern],” and Step 5 of Section 7.4.1 states that one option for processing the concern is to “summarily close the concern and notify the CI.” These procedure steps provide no explanation or examples of the basis for this type of closure without investigation. The procedure does not address the responsibility and action steps to ensure that any corrective actions to resolve concerns are formally documented (e.g., a deficiency or nonconformance report) and tracked in a formal tracking system before closure, as required by DOE Order 442.1A, paragraph 4.c.(1).(a).

ECP Implementation

Independent Oversight recognizes that many concerns reported to ECPs suffer from a lack of tangible, corroborated, clearly defined evidence and facts. In many instances, definitive resolution of concern cases is challenging because the available data consists primarily of conflicting statements about an event or situation, often affected by the presence or absence of witnesses or documented records. However, even if cases are not substantiated or actionable facts are lacking, the very fact that an investigation is conducted and questions are asked can change behaviors and reinforce positive safety cultural expectations.

Independent Oversight reviewed eight closed ES&H-related employee concerns casefiles from CY 2011 and 2012. Although not specified in or required by procedure, the safety-related casefiles include good casefile management tools, such as a printout of information from the ECP database, casefile checklist, confidentiality/disclosure agreement, and intake form. Reports of investigations of concerns referred to the DOE OSQA reflect generally thorough, well documented evaluations, with adequately supported conclusions. Although casefiles for retaliation concerns that were redirected to 10 CFR 708, Subpart B complaints did not contain much information (See further discussion below.), the casefiles for most ES&H-related concern investigated by DOE staff or contractor ECPs contain appropriate documentation of the concern management process from initiation to closure.

However, the content and quality of casefile information are inconsistent, and the approach taken to resolve some concerns may not have adequately considered and fully addressed potential safety issues. These weaknesses limit the effectiveness and integrity of the DOE-SR ECP. The following weaknesses in ECP implementation were identified by Independent Oversight (See **OFI-4** and **Finding 1**):

- The ECP Specialist provides a complaint reporting format, guidance, and help with preparation of 10 CFR 708 retaliation complaints; this regulatory process can be intimidating because of its complexity, the involvement of and/or need for legal counsel, and restrictions on actions, timeliness, reporting, and appeals. However, the practice of counseling CIs on the use of this process may not always be in the best interest of the CI or effective in ensuring that safety issues are fully evaluated and resolved. All 11 of the concerns reported in CY 2011 and CY 2012 that were addressed via the 10 CFR 708 process were settled, dismissed, or withdrawn without any investigation into the validity or basis of the retaliation or alleged underlying safety issues or whether these issues had been addressed, if true. Many negotiations between the CI and contractor legal counsel resulted in monetary settlements. For the one 10 CFR 708 complaint that was withdrawn, the CI’s typed concern statement, which was not in a 10 CFR 708 format or on DOE-SR ECP Report Form 230, was 19 pages long and listed 13 safety concerns and 13 retaliation/harassment instances. The CI withdrew it two days after counseling and the case was closed, with no action to evaluate the validity of the CI’s concerns.

- Complaint files under 10 CFR 708 are identified as formal concerns (designated with “RP” case number prefixes) and included in quarterly and annual statistical reports. However, the casefiles for these concerns lack much of the documentation contained in the casefiles for other ES&H-related concerns (designated with “EC” prefixes), such as intake forms, checklists, completed Form 230s, and closure information.
- In the concern files reviewed by the team, the intake process information documentation, including the documentation of the specific concerns, was inconsistently and inadequately completed. The casefiles contained handwritten ECP Report Form 230, with no indication of who completed the form and no CI signature, but with a typed report date. There was also a typed Form 230 in each file (presumably typed by or for the ECP Specialist), also unsigned by either the CI or the ECP Specialist and typically with a date different from the one on the handwritten form. Often the handwritten and typed forms had different information, including concern details (some concern elements not included on the typed form); in one case, the “yes” box was checked indicating an immediate safety concern on the handwritten form, but the “unknown” box was checked on the typewritten form. As discussed in the previous section, the procedure does not detail a process or need for interaction between the ECP staff and the CI to clearly define the details, significance, and scope of concerns to facilitate a thorough investigation and full resolution of all aspects of each issue. Casefile evidence indicates the need for a more formal process and implementation in this area.
- In addition to the above documentation problems, each of the casefiles in the sample reviewed by Independent Oversight had one or more administrative or technical discrepancies, including:
 - There are discrepancies in the dates on the database information, the chronological log, the intake form, and Form 230s. For example, for one concern, the database states the date received as 8/2/2011 but the chronological log states that 10 CFR 708 counseling was conducted on 7/28/2011. The formal complaint is dated 7/29/11, but three other signed copies of the complaint in the casefile lack a date.
 - Transfer/referral forms do not clearly indicate what information was provided to the responsible organization (e.g., only the typed but unsigned Form 230, and/or the handwritten Form 230).
 - Some files have no confidentiality “release” form” (a form not specified in the procedure but included in some files).
 - There is no evidence or documentation of training given to non-ECP investigators (required by the procedure or instructions) on maintaining confidentiality.
 - Investigation reports are not always signed by the OSQA Manager or forwarded to the ECP under the Manager’s cover email or letter; SMEs sent reports sent directly to the ECP.
 - Resolution/closure letters to CIs do not describe appeal options or provide contact information, other than the DOE-SR ECP Specialist’s phone number.
 - Some investigation reports do not reflect that the CI was interviewed by the investigator(s) or that the personnel listed by the CI on the Form 230 that might corroborate, or provide further information about the concern, had been interviewed.
 - One casefile had an investigation report dated 11/10/11 while the chronological log and email correspondence cited a request for extension for submitting the investigation on 11/30/11 and again on 1/5/12, and no explanation or subsequent report information is in the file.
 - A conflict of interest form in one file is not in the DOE-SR procedure or other casefiles. This form was signed by a DOE Facility Representative and a person who works for the manager the case was referred to, but not by the investigator or the manager the case was referred to.
 - For a case referred to DOE-SR by the DOE Inspector General (IG), the casefile did not include an investigation report as prescribed in the DOE-SR ECP procedure. Instead, it contained an evaluation summary, apparently developed by other staff in DOE-SR, which was undated and unsigned (with no indication of the source or author in the casefile). This summary evaluation was cut and pasted into a response letter to the IG. In addition, one of the concerns reported in

this case was retaliation for raising safety issues. The DOE-SR response to the IG did not address the retaliation issue except to state that the CI could file a 10 CFR 708 complaint if he/she wished. There was no indication in the casefile that the CI was interviewed by DOE-SR personnel.

- Resolution and corrective actions are not tracked by the ECP or verified to be tracked by some other formal tracking system, as required by DOE Order 442.1A. In some cases, the file does not indicate what actions a contractor was planning to take for a substantiated concern.
- Some concerns, typically issues outside the ECP's ability to resolve, were transferred to other parties (e.g., contractors, DOE line organization, or DOE-SR EEO office) for disposition and closure. When such concerns were received by ECP, they were not assigned a formal concern number or a casefile, nor were they entered into the ECP database. The ECP Specialist maintains a "confidential log" (not related to a CI's request for confidentiality) that documents a summary of these concerns, but does not include the detail provided in numbered concern casefiles (i.e., no Form 230, no intake form, and no formal closure documentation), and it is not mentioned in the ECP procedure. The "confidential log" also includes information requests that would not normally be logged as concerns. An example of a concern that should have been given a formal case number and documented as a formal transfer was an anonymous report to the ECP that a specific contractor individual was making drug sales out of his vehicle on site on specific days of the week. The "confidential log" simply stated that the information was provided to the DOE Office of Safeguards, Security, and Emergency Services.
- The formal communications of results to concerned employees often do not provide sufficient details on the investigation to assure the CI that the investigations were robust and fair, and they do not state the options in case the CI disagrees with the concern resolution. This communication weakness is particularly problematic in the closure letters issued to CIs. These letters typically state that the concern was investigated and not substantiated (with no details) and provide the phone number of the ECP Specialist in case of questions.

ECP Oversight and Self-Assessment

As required by DOE Order 442.1A and the "Responsibilities" section of the ECP procedure, DOE-SR conducted a self-assessment of the ECP in November 2009 through a peer review by the DOE Richland Operations Office (RL) ECP manager and a RL ECP specialist. This was a thorough evaluation that resulted in 6 findings and 14 recommendations. However, no self-assessments have been conducted since 2009. (See **OFI-5** and **Finding 1**.)

The DOE-SR ECP Specialist is proactively performing comprehensive, formal annual assessments of DOE-SR prime contractor ECPs, using a checklist of questions addressing approximately 15 program elements and DOE order requirements. However, the documentation of contractor performance with respect to these questions and criteria is not always sufficiently detailed to support a conclusion that the criteria were met. Further, many of the questions are process related, with little qualitative evaluation of such critical elements as the adequacy of the intake process or the rigor of concern investigations. (See **OFI-5**.)

5.0 CONCLUSIONS

Many attributes of the DOE-SR ECP provide a sound basis for effective management of safety and operational concerns reported by employees. The purpose, availability, and access information for both DOE and prime contractor ECPs are communicated regularly and appropriately to employees and posted

on site bulletin boards. A formal procedure has been developed, and the details of concern reports, investigations, and resolutions are documented in casefiles. With one noted exception, investigations performed by DOE SMEs were comprehensive and well documented.

However, weaknesses in process and performance detract from the effectiveness of the DOE-SR ECP and can result in negative perceptions of the program among federal and contractor employees. SRIP Procedure 442.1 requires substantial changes to adequately describe the responsibilities, requirements, and processes necessary to support implementation of an effective ECP. Informal processes, such as the “confidential log,” and inconsistent documentation in casefiles need to be addressed. The ES&H elements of retaliation complaints must be evaluated sufficiently to ensure that no valid issues remain unaddressed. Weaknesses were identified in communication with CIs during the intake process, documentation of concern specifics, and communication of investigation results and avenues for appeal to the CI at closure. Thorough investigations, complete documentation, and ongoing and open communication among investigators, ECP staff, and the CI would enhance employee and stakeholder perceptions about the fairness and effectiveness of the DOE-SR ECP.

6.0 OPPORTUNITIES FOR IMPROVEMENT

This Independent Oversight review identified the following opportunities for improvement. These potential enhancements are not intended to be prescriptive or mandatory. Rather, they are offered to the site to be reviewed and evaluated by the responsible line management organizations and accepted, rejected, or modified as appropriate, in accordance with site-specific program objectives and priorities.

OFI-1: Review, update, and maintain ECP information provided on external and internal DOE-SR web pages. Specific actions to consider include:

- Consolidate information into a single ECP web page with appropriate links from other web pages.
- Update all contact information, including the names of the current ECP Manager and ECP Specialist. Include ECP contact information for all SRS contractors and identify the physical location of the ECP staff offices.
- Expand program information to include a specific reference to the ECP procedure and a statement that the ECP is managed through the OCR.

OFI-2: Consider adding signage in DOE Building 730-B to direct personnel to the ECP staff offices and OCR administrative personnel who can take messages or provide information to walk-in clients.

OFI-3: Review and revise SRIP Procedure 442.1 to better define and detail roles and responsibilities and the processes that are needed to ensure effective program implementation and resolution of concerns. Specific actions to consider include:

- Develop a formal flow chart of the elements of the ECP to facilitate procedure organization and linkages to the various pathways and associated sub-processes involved in managing employee concerns.
- Review and address the specific procedural weaknesses identified during this review, as discussed above and provided to the ECP staff by Independent Oversight. Ensure that improvements sufficiently address the critical process elements of concern descriptions, referral investigation, confidentiality expectations and review, comprehensiveness of investigations, and improved communication with concerned employees.

OFI-4: Strengthen the implementation of the ECP to ensure that concerns are accurately described, that concern dispositions are accurately and sufficiently supported, and that communications with employees foster confidence in the integrity and effectiveness of the DOE-SR ECP. Specific actions to consider include:

- Ensure that during the intake process, communications with the CI include formal clarification of concerns and elicit specifics and examples to facilitate subsequent investigation. Document the discussion details and any changes to the initially reported concerns. Encourage employee signatures on Form 230 for initial and restated or clarified concerns, whether written by the CI or the ECP Specialist.
- Review the practice of and threshold for referring contractor employee retaliation concerns to the 10 CFR 708 complaint process.
- Review the practice of using separate identification designations for retaliation cases in the ECP case log.
- Rename and reconsider the use of the “confidential log” to limit its use to documenting contacts from employees that are clearly not related to issues that need to be investigated, transferred, or referred (e.g., information requests).
- Ensure that retaliation and ES&H-related elements of retaliation complaints filed in accordance with 10 CFR 708 are adequately addressed to ensure that no underlying safety or safety culture issues remain unresolved.
- Increase the use of objective evidence and performance-based techniques to support investigations, such as specific document reviews, work observations, pre-job briefing attendance, etc., as appropriate. Where possible, interview assertions should be corroborated by objective evidence to support conclusions.
- Provide additional detail in closure correspondence to CIs to the extent that they understand the basis for conclusions, have assurance that a fair and robust investigation was performed, and are aware of avenues available if they are not satisfied with the disposition of the concern.
- Employ a second-party quality review (signed and dated) and/or ECP Manager approval of case file documentation before final disposition and closure.

OFI-5: Strengthen self-assessment and oversight performance. Specific actions to consider include:

- Schedule and perform annual self-assessments as required by DOE Order 443.1A. Rather than performing a comprehensive program review every year, select a subset of key program elements and employ DOE-SR quality assurance SMEs with experience in assessment to perform or assist in the review.
- Ensure that the results of contractor ECP assessments fully describe what was reviewed in order to draw conclusions about performance and focus evaluation on qualitative aspects rather than process descriptions or compliance.

OFI-6: Enhance the value of the item on the Human Resources employee departure checklist requiring the employee to meet with ECP to ensure that there are no open concerns. Include in this meeting an exit interview and/or questionnaire ensuring that they have no new concerns to report and soliciting opinions/perceptions about the ECP process and performance as a means for continuous improvement. Develop a set of questions or topics to frame this interview.

7.0 FINDINGS

Finding 1: DOE-SR has not implemented a fully effective ECP as required by DOE Order 442.1A, *Department of Energy Employee Concerns Program*, and SRIP Procedure 442.1, *DOE-SR Employee Concerns Program*.

Appendix A Supplemental Information

Dates of Review

Offsite Planning: May 2013
Onsite Review: June 3-5, 2013

Office of Health, Safety and Security Management

Glenn S. Podonsky, Chief Health, Safety and Security Officer
William A. Eckroade, Principal Deputy Chief for Mission Support Operations
John S. Boulden III, Director, Office of Enforcement and Oversight
Thomas R. Staker, Deputy Director for Oversight
William E. Miller, Deputy Director, Office of Safety and Emergency Management Evaluations

Quality Review Board

William Eckroade
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