

November 3, 2011

Dr. Peter Winokur, Chairman ,
Ms. Jesse Hill Roberson, Vice-Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Ave, NW Suite 700
Washington, DC 20004
<www.dnfsb.gov>

Subject: Public Comments on DOE's September 19, 2011 supplemental response to Recommendation 2011-1, *Safety Culture at the Waste Treatment and Immobilization Plant (WTP)*

Dear Chairman Winokur and Vice-Chairman Roberson,

Per 42 U.S.C. section 2286d(b)(3), I provide "comments, data, views, or arguments" concerning the Secretary of Energy's September 19, 2011 supplemental response to Recommendation 2011-1.

I am a deeply concerned licensed professional engineer (PE), employed since 1990 as a safety engineer (including nuclear safety) in the U.S. Department of Energy. If my longstanding, well-evidenced, good-faith concerns are valid and remained unresolved, then DOE cannot have an adequately safety culture, and America cannot have an adequately safety nuclear future - and neither does it have an adequately safe nuclear present.

My diagnosis is stark:

1) there are significant and persistent deficiencies in the scope and implementation of engineering ethics, that enable much institutional evil and human suffering around the world, and are directly relevant to worker and public health and safety in DOE's (and America's) nuclear facilities and operations, both ongoing and anticipated, and ¹

2) there is a 33 year-long "broken covenant" between the President and the federal civil service - Presidents since 1978 have not ensured that three crucial, intertwined civil service laws for ensuring the adequate protection of federal employees from reprisal, discrimination, cronyism, personal favoritism and other types of "prohibited personnel practices (PPPs)" are properly interpreted and applied, so they can perform their duties in

¹ See www.aaas.org/spp/sfrr/per/per43.htm for my published article, "Is Engineering Ethics Ethical? Is Engineering Ethics "at all"? in a publication of the American Association for the Advancement of Science, the world's largest science and engineering membership society.

a trustworthy fashion, per the “merit system principles”- and I contend they are not.²

If I am correct, then these concerns combine and amplify in DOE and its defense nuclear facilities - precluding them from having an adequate safety culture.

DNFSB Recommendation 2011-1 is based, in my opinion, on unverified and invalid premises including: 1) the engineers responsible for the design, construction, operation, maintenance of the DOE’s defense nuclear facilities, including the WTP, either know or will comply with their duties to worker and public health and safety by engineering ethics, specifically when doing so is inconvenient to their economic well-being or that of their employers, and 2) the federal employees, including DOE nuclear safety engineers as myself, are adequately protected from reprisal or other types of prohibited personnel practices (PPPs), so we can do our duty without fear or favor - and actually be relied upon to be so foolish to put the public health and safety before our economic self-interest.

I appreciate that Rich Schapira of your staff spent the time in September 2011 to hear me out - something no one in DOE has yet to do. In the past few years I have tried to bring forward my well-evidenced, long-standing, far-reaching and good-faith concerns in every venue DOE makes available to its concerned employees - DOE Inspector General, employee concerns, differing professional opinion, grievances, letter to senior DOE officials - and it has been completely futile. I have concluded that the DOE officials responsible for environment, safety and health lack the necessary moral/professional courage - because DOE (as other) safety professionals (and those who manage them) must have the moral/professional courage “to hold paramount the public (including workplace) health and safety in the performance of professional duty,” to be worthy of the vocation of “safety professional.” This is not just my opinion, it is the explicit expectation of the safety professions of their members, by their rules of professional conduct/codes of ethics.

I have been bringing my concerns about the coercive, repressive safety culture in DOE to the DNFSB’s attention for almost 20 years. Until Recommendation 2011-1 was issued, I perceived my efforts were basically futile - that the responsible DNSFB officials, just as DOE officials, lacked the moral/professional courage to make professional ethics/rules of professional conduct for DOE’s safety professionals in DOE’s defense nuclear facilities more than so much eyewash - to be applied only consistent with the apparent “prime directive” - “think first of yourself.”

I was present in the room when Secretary of Energy O’Leary, in December 2003, stated “zero tolerance for reprisal” and “celebrate whistleblowers.” She made promises she could not keep, because the Civil Service Reform Act of 1978 and Federal Whistleblower Protection Act of 1989 create complementary responsibilities in agency heads, the U.S. Office of Special Counsel

² See www.broken-covenant.org for a detailed description and links to a petition on the White House website, calling for President Obama to task the Attorney General to resolve my contentions.

(OSC), and U.S. Merit Systems Protection Board (MSPB) to: 1) prevent reprisal, discrimination, cronyism, personal favoritism and other types of PPPs; 2) protect federal employees from PPPs, and 3) determine whether federal employees are adequately protected from them. I allege that OSC is a 33 year-long fraud of a federal law enforcement agency - the most corrupt and corrupting federal agency in America's history, relatively at least - and that MSPB is its 33 year-long lawbreaking enabler. Because of this, Secretary O'Leary's well-intentioned statements were null and void, just as DNFSB Recommendation 2011-1 is, in my professional opinion.

Chairman Winokur, you have the lawful authority to have my contentions substantiated or dispelled, via rule of law, by tasking the Office of Legal Counsel of the Department of Justice to issue opinions on the 3 key, intertwined, civil service laws at the heart of my contentions of "broken covenant." This would take moral/professional courage on your part. But it would not take as much as required of Secretary Chu, as he serves at the pleasure of the President, while you do not.

If my concerns are substantiated, it is GOOD NEWS for America in that: 1) a previously unidentified significant causal factor in much which has befallen America in past 33 years is exposed, and 2) it can be readily corrected. Additionally, it should (eventually at least) result in your being able to state something you cannot now say - "I am scrupulously complying with my nondiscretionary statutory duty to 'prevent PPPs' in DNFSB, because I can objectively state that DNFSB employees are adequately protected from them."

I am making a public statement, about matters of great importance to the public health and safety. I am making them consistent with my responsibilities to public health and safety as a licensed professional engineer. I challenge anyone - anyone - to file a professional misconduct against me with the Tennessee Board of Architectural and Engineering Examiners if they contend my claims are not objective and truthful - at least then someone will be responsible to evaluate my concerns, instead of ignoring me altogether, or listening and then doing nothing.

I consider this an engineering report, so I am stamping it as a PE.

Respectfully,

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