U.S. Department of Energy ORDER
Washington, D.C. DOE O 442.1
Approved: 02-01-99
Review Date: 02-01-01

DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM

1. OBJECTIVE. 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 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. CANCELLATION. 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 Current ECP's, implemented pursuant to DOE 5480.29, will remain in effect until superseded by revised programs implemented under this Order.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. 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:

         (a) other DOE 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 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 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 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 Managers.

(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.

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 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:

RICK FARRELL
DIRECTOR OF MANAGEMENT
AND ADMINISTRATION

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.