

June 18, 2011

Mr. Andrew Thibadeaux
DNFSB
625 Indiana Avenue, NW., Suite 700,
Washington, DC 20004-2901

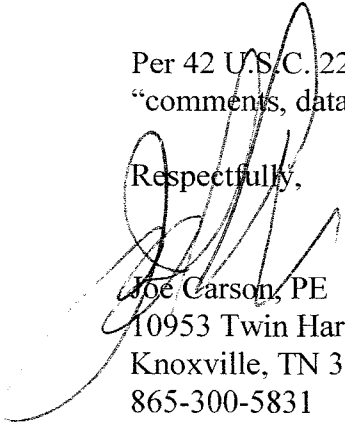
RECEIVED
21 JUN 23 PM 3:19
DOE SAFETY BOARD

Subject: Comments on Recommendation 2011-1

Dear Mr. Thibadeaux,

Per 42 U.S.C. 2286a(a)(5), I submit my letter to DOE Deputy Secretary Poneman as my "comments, data, views, or arguments" concerning the recommendation.

Respectfully,


Joe Carson, PE
10953 Twin Harbour Drive
Knoxville, TN 37934
865-300-5831



U.S. Department of Energy
Oak Ridge Office

Joseph Carson, P.E.

Facility Representative

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June 18, 2011

Mr. Daniel Poneman
Deputy Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585

RECEIVED
2011 JUN 20 PM 3:13
DNFSB SAFETY BOARD

Subject: Defense Nuclear Facilities Safety Board Recommendation 2011-1 and the inaccurate, possibly in bad-faith, claims in your related email of June 17, 2011

Dear Mr. Poneman,

I am responding to your email of June 17, 2011¹ about Defense Nuclear Safety Board recommendation 2011-1, "Safety Culture at the Waste Treatment and Immobilization Plant."^{2 3}

I am a deeply concerned licensed professional engineer (PE), employed by the Department of Energy's Environmental Management Program (EM) as a safety engineer. I believe DOE's safety culture is built on a foundation of sand - and for reasons outside DOE's direct control.

The established legal record shows I am a rarity as an engineer and federal employee - I have displayed the moral courage to defend and uphold my profession of engineering, its code of ethics, the "merit principles" of the federal civil service, and the public health and safety in the face of repeated and concerted governmental lawbreaking.^{4 5}

¹ Available at http://whsknox.blogs.com/covenant/poneman_june17.pdf

² See http://www.dnfsb.gov/pub_docs/recommendations/hanford/rec_2011_1_hd.pdf

³ A news story about the recommendation is at www.tri-cityherald.com/2011/06/14/1528886/defense-safety-board-blasts-doe.html

⁴ Published decisions involving aspects of the agency's lawbreaking against me include: Carson v. Department of Energy, 77 MSPR 453 (1998); Carson v. Department of Energy, 85 MSPR 171 (2000); Carson v. Department of Energy, 88 MSPR 260 (2001); and Carson v. Department of Energy, 398 F.3d 1369 (Fed. Cir. 2005). Related unpublished decisions, which provide more detail of the agency's retaliatory lawbreaking, can be found online at www.carsonversusdoe.com.

⁵ My actions, among other things, played a positive, if not significant role in the passage of the Energy Employees Occupational Illness Compensation Program Act of 2000. By it, over 65,000 disabled, diseased or prematurely deceased DOE workers or their family have received over 6.5 billion dollars in compensation.

I no longer much blame the involved DOE managers for the reprisal I experienced, even though I think it possibly contributed to one or more workplace fatalities in DOE. They would have likely been punished themselves had they not punished me for being so foolhardy to put my positive legal and professional duty to protect others before my economic self-interest. Additionally, I suspect they were doing as instructed by DOE personnel specialists and attorneys.

I have concluded, based on many lawsuits and FOIA requests in past 8 years, that the lawbreaking I have experienced in DOE is just another manifestation of the federal government interpreting away, 33 years ago, its duties per the Civil Service Reform Act of 1978 (CSRA) to ensure federal employees are adequately protected from reprisal and other types of prohibited personnel practices (PPPs), so they could perform their duties in a trustworthy fashion, per the merit system principles. I term this the “broken covenant” of the CSRA.

Consistent with my good-faith belief of 33 years of misinterpretation and misapplication of three civil service laws essential to ensure federal employees are adequately protected from PPPs, I am engaged in good-faith efforts to have my concerns substantiated or dispelled, via rule of law, at the Office of Legal Counsel of the Department of Justice.⁶

How are my concerns relevant to your email and DNFSB Recommendation 2011-1?

- 1) I have been in regular contact with the DNFSB about my concerns for approaching 20 years. For years I critiqued it for not considering my concerns about DOE’s culture of reprisal/lack of robust safety culture as being relevant to its mission. I suspect my efforts played a role in recent recommendation.
- 2) I have brought my concerns about the “broken covenant” to Secretary Chu’s attention and the attention of every organization mentioned in your email.⁷ No one tells me I am wrong, everyone seems to lack the moral courage to take the actions necessary to have them substantiated or dispelled.
- 3) Your email does not mention the one way specified in law to anyone with “any concerns related to the DNFSB Recommendation” to document them - which is by submitting “comments, data, views, or arguments” on the Recommendation to the DNSFB, per the law and related Federal Register notice.⁸

⁶ See www.broken-covenant.org

⁷ My April 2, 2011 letter to Secretary Chu, which received no response, lists 11 ways I have tried in past year to have my concerns substantiated or dispelled. See http://whsknox.blogs.com/covenant/Carson_Sec_Chun_April_2_2011.pdf

⁸ See 42 U.S.C. 2286d(a) and www.gpo.gov/fdsys/pkg/FR-2011-06-20/html/2011-15146.htm Comments can be mailed to the

- 4) Your email states that DOE's response to the DNFSB Recommendation "will also detail specific areas where our own investigation identify inaccuracies in the Board's report." I respectfully recommend that DOE's response include a request for the DNFSB (i.e. "Board") to hold "public hearings for the purpose of obtaining public comments on its recommendation and the Secretary of Energy's response," per 42 U.S.C. section 2286d(b)(4), including in Oak Ridge, TN.
- 5) Your email's claim on behalf of Secretary Chu that "we can assure you that...no adverse reaction to any expression of concern or complaint will be tolerated" is, at best, naive. At worst it is a cynical, bad-faith ploy to encourage concerned DOE employees to speak up, so they can be eliminated from DOE.

Let me state what you are unable to say or do:

- 1) Tell DOE employees that Secretary Chu is in objective compliance with his nondiscretionary statutory duty to "prevent reprisal and other types of PPPs" because DOE employees are adequately protected from them.⁹
- 2) Tell DOE employees that DOE has the statutory power to protect its employees from reprisal and other types of PPPs.¹⁰
- 3) Tell me or my family that we have received any official apology (let alone any positive recognition) from DOE for its established record of repeated lawbreaking against me, taken to punish me for doing my duty to protect others.

Mr. Poneman, I have told my management that I am composed to unjustly losing my job in DOE to have my concerns substantiated or dispelled at the Office of Legal Counsel of the Department of Justice. Why do I need to say this? My management apparently lacks the moral courage to take risks to their professional interests to ensure DOE safety professionals are adequately protected from reprisal and other PPPs so they can do their duty to protect others without risking

attention of Andrew Thibadeaux at the Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2901

⁹ See 5 U.S.C. section 2302(c) and Office of Hearing and Appeals case TFA-0346 www.oha.doe.gov/cases/foia/tfa0346.pdf

¹⁰ Any DOE employee who alleges reprisal or other types of PPPs to the DOE IG, DOE employees concerns program, or to DOE HR will be told that DOE cannot investigate such allegations and that they should contact the U.S. Office of Special Counsel (OSC). Given that, how can you, on behalf of Secretary Chu say, "no reprisal will be tolerated" when you cannot even investigate a complaint of reprisal nor say that DOE employees, either now or at any time since implementation the CSRA, have been adequately protected from it?

their savings, families, careers - just as I have risked. It would take moral courage for you to tell Secretary Chu that you will publicly resign if he does not use his lawful power to task the Office of Legal Counsel to substantiate or dispel my reasonable, good-faith, concerns. It would take moral courage for Secretary Chu to tell the President that he will publicly resign if the White House tries to prevent this.¹¹

It would take moral courage for DNFSB Chairman Winokur to recognize that an adequate DOE safety culture requires the federal government to comply with its duties to ensure all federal employees - including at DNFSB - are adequately protected from reprisal and other PPPs and use his lawful power to task the Office of Legal Counsel to substantiate or dispel my concerns.

It would take moral courage for Tom Carpenter, who represents Dr. Tamosaitis, the WTP whistleblower, to say “Joe Carson’s concerns are reasonable and warrant being substantiated or dispelled at the Office of Legal Counsel.”¹²

It would take moral courage for leaders of federal employee unions as Colleen Kelly at NTEU to say “Joe Carson’s concerns are reasonable and warrant being substantiated or dispelled at the Office of Legal Counsel.”¹³

It would take moral courage for leaders of “good government groups” as Government Accountability Project, Project on Government Oversight, Alliance for Nuclear Accountability, to say, “Joe Carson’s concerns are reasonable and warrant being substantiated or dispelled at the Office of Legal Counsel.”¹⁴

It would take moral courage for John Berry, Director of Office of Personnel Management, Susan Grundmann, Chairman of the Merit Systems Protection Board and/or Carolyn Lerner, the Special Counsel at the U.S. Office of Special Counsel to say, “Joe Carson’s concerns are reasonable and warrant being substantiated or dispelled at the Office of Legal Counsel.”¹⁵

Why would it take moral courage? But there could be adverse consequences to professional

¹¹ See 28 U.S.C. sections 510-512 and 28 C.F.R. section 0.25 as well as www.justice.gov/olc/

¹² I have known Mr. Carpenter for approaching 20 years, he now heads the Hanford Challenge which represents Dr. Tamoisitis www.hanfordchallenge.org

¹³ NTEU represents thousands of DOE employees, Ms. Kelley is familiar with my concerns and has not disputed them.

¹⁴ Leaders in these organizations are familiar with my concerns and do not dispute them.

¹⁵ These officials are familiar with my concerns and do not, at this point, dispute them.

interests or their organization's interests to do so - they could be revealed as long-time profiteers from the suffering and sacrifice of people like me - if my concerns are substantiated.

So I am making clear that I have the moral courage to unjustly lose my employment to have my concerns substantiated or dispelled, via rule of law, at the Office of Legal Counsel. Perhaps moral courage will prove contagious in this matter. If my concerns are substantiated, it is GOOD NEWS for America - a previously unidentified cause of much which has befallen and besets our Country will be exposed and can be readily fixed. The possible upside to my Country and Countrymen justify, in my mind, the moral courage to risk further lawbreaking at DOE's hands.

I have nothing to hide about my motivations and actions, and welcome a skeptical, questioning attitude to my concerns and their basis in law and fact.

Respectfully,

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copy:

President Obama, Secretary Chu, my management chain in Oak Ridge, others in DOE from whom I have sought assistance in resolving my concerns, NTEU officials, DNFSB, others mentioned in this letter, Congressional oversight committees, media, etc.