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Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

Summary of OSC File No. DI-02-0572

The whistleblower in this case, Richard Levernier, is a Program Specialist with DOE. Mr. Levernier consented to the release of his name. In his disclosure, Mr. Levernier alleged violations of law, rule or regulation and that there were serious deficiencies in DOE's Safeguards and Securities Program. He also alleged a substantial and specific danger to public health and safety due to concerns that the nation's class "A" nuclear research facilities and laboratories were vulnerable to terrorist attack, theft, and sabotage.[1] DOE's class "A" facilities are charged with a number of different functions including research, disassembly of nuclear weapons stockpiles, storage of nuclear components and raw materials including Special Nuclear Material used for the production of nuclear weapons, and the replacement and refurbishment of nuclear weapons components presently in use by the U.S. military.

Mr. Levernier's allegations were referred for investigation to former Secretary Spencer Abraham on October 25, 2002. On May 29, 2003, OSC received the Secretary's report pursuant to 5 U.S.C. § 1213(c) and (d). DOE's report sets forth the findings and conclusions of the Secretary's review of Mr. Levernier's disclosures of information. DOE did not substantiate the allegations. Mr. Levernier's comments on the report are included here as attachments.

Mr. Levernier raised similar security and vulnerability concerns regarding the Office of Transportation Safeguards, the division of DOE responsible for the transportation of DOE assets, including nuclear weapons and materials, throughout the United States. This portion of the disclosure included classified information. OSC determined that the classified disclosure involved counterintelligence information. Thus, in accordance with 5 U.S.C. § 1213(j), the information was transmitted to the National Security Advisor, the Senate Select Committee on Intelligence and the House Select Committee on Intelligence on June 7, 2002.

The Whistleblower's Disclosures and the Report of the Department of Energy

Mr. Levernier served as DOE's Quality Assurance Program Manager for Nuclear Security from March 1995 to August 2000. He managed a team of experts responsible for reviewing security plans for DOE facilities to assess risk determinations and identify vulnerabilities to

[1]When Mr. Levernier made his disclosure in January 2002 there were approximately 10 class "A" facilities. Since then, the number has decreased because DOE has consolidated nuclear material and shut down some facilities.

security. In August 2000, Mr. Levernier's security clearance was revoked; thus, he has not had access to classified security information since that time.

Mr. Levernier's allegations primarily fall into four categories: 1) the alleged failure of DOE class "A" nuclear facilities to employ explosives detection equipment as required by DOE Order; 2) alleged deficiencies in DOE's force-on-force performance tests at its nuclear facilities; 3) alleged deficiencies in DOE's Safeguards and Security process; 4) alleged security risks at the Los Alamos National Laboratory.

Given the comprehensive role of these DOE facilities in maintaining, repairing, and disposing of nuclear weapons, Mr. Levernier is particularly concerned with these facilities because of the serious consequences which could result from a terrorist attack, including sabotage or theft of Special Nuclear Material. In addition, he remains concerned that terrorists could attempt to explode a DOE facility located in a populated area, or steal materials to create an explosive device for later use.

Report of the Department of Energy

In response to the Special Counsel's referral, DOE officials met with Mr. Levernier to discuss the allegations. At that time, Mr. Levernier provided more detailed information on his allegations. The report notes that Mr. Levernier identified a significant number of policy issues and a legal concern. DOE formed a task force to review some of the policy issues; other policy and legal issues were forwarded to the appropriate DOE offices for action. Mr. John C. Todd, former Chief, Defense Nuclear Security, and the primary author of the report, conducted interviews with the Safeguards and Security officers at DOE facilities implicated by the allegations as well as the Director of the Office of Performance Assurance and Assessment. The Office of Secure Transportation and the Office of Environmental Management also provided responses to Mr. Todd which were included in the report.

To add perspective to the allegations, the report provides an overview of the process used to develop and implement the security posture of the nuclear weapons complex. The report, which is summarized below, contains a description of the components of its security programs as well as responses to the specific allegations made by Mr. Levernier.

At the outset, DOE's report states that the allegations do not accurately reflect the agency's present safeguards and security posture. Significant changes have been made to the security apparatus since August 2000 when the National Nuclear Security Administration (NNSA) was established. According to the report, Congress created the NNSA, in part, in response to previous concerns about security in the nuclear weapons complex. Since August 2000, changes have been made throughout DOE. The report states that the changes to security and protection have been reviewed and evaluated by independent organizations even more so after the terrorist attacks of September 11, 2001.

The report explains that the Design Basis Threat (DBT), a classified document issued by DOE Headquarters for all facilities with Special Nuclear Material, identifies the attributes of the adversaries and the types of attack that must be considered in formulating a defense strategy.

The DBT forms the basis for the development of protection strategies, defines adversaries ranging from terrorist threats to disgruntled employees, and includes chemical, biological, and radiological attacks as well as sabotage. DOE's protection process and strategy includes several components—vulnerability assessments, computer modeling capability, force-on-force testing, iterative site analysis and the site safeguards and security plan. DOE's report describes each of these components. A summary of DOE's response to each specific allegation is set forth below.

1. Lack of Explosives Detection Equipment

Allegation

Mr. Levernier stated that DOE Order 470.1 required DOE's class "A" nuclear research facilities and laboratories to use explosives detection equipment at certain points of entry. Mr. Levernier alleged that, as of August 2000, none of the facilities were in compliance with this requirement.

The DOE Manual for Protection and Control of Safeguards and Security Interests, DOE M 5632.1C1, establishes the requirements for screening at points of entry to Protected Areas[2] and to Materials Access Areas.[3] Mr. Levernier stated that, in the absence of the requisite detection equipment, DOE relies on compensatory security measures, such as visual inspection, for controlling access to these sensitive areas. Thus, Mr. Levernier alleged that by failing to install explosives detection equipment, DOE is disregarding the security requirements it put into place to safeguard the inventory of Special Nuclear Material in its custody at its class "A" facilities.

Report of the Department of Energy

The report denies that DOE disregards the requirements for explosives detection. The report explains that the Order requires DOE to provide for the detection of explosives, but does not mandate the use of a specific type of explosives detection equipment. The agency asserts that the DOE policy is flexible in order to deal more effectively with the variety of explosives on the market. In addition to explosives detection equipment, the policy also allows for the use of screening techniques and explosive detecting animals. The policy takes into account that some DOE facilities have explosives on-site reducing the practicability of commercially available explosives detection equipment. DOE states that the basis for the policy is the varied nature of existing explosives as well as the limitations with the present generation of explosives detection equipment.

The report also states that DOE continuously receives new explosives detection equipment in an effort to improve this aspect of security. Additionally, DOE conducts research on new

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[2] A Protected Area is defined as a security area encompassed by physical barriers, surrounded by intrusion detection and assessment systems, and having access controls for the protection of Category II quantities of Special Nuclear Material and/or to provide a concentric security zone surrounding a Material Access Area or Vital Area.

[3] A Material Access Area is defined as a security area defined by physical barriers and subject to access control, used for the protection of Category I quantities of Special Nuclear Material or Category II quantities of Special Nuclear Material with credible rollup to Category I quantity. Material Access Areas are contained with Protected Areas and constitute separate secure areas within Protected Areas.

types of explosives detection equipment that would enhance the usefulness and the detection capabilities of such equipment.

2. Alleged Deficiencies in DOE's Force-on-Force[4] Performance Tests

Allegation

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According to Mr. Levernier, due to the deficiencies and gaps in the force-on-force performance exercises, DOE is not adequately prepared to defend the facilities against such an attack. Mr. Levernier alleged that these deficiencies violate DOE Order 470.1 which requires that the protective forces be capable of rapid reaction in order to recapture a DOE asset or stop a sabotage attack.

Report of the Department of Energy

The report states that the purpose of the force-on-force tests is to validate the protection strategies that have been defined in the Site Safeguards and Security Plan and implemented at the site. These tests keep the protective forces current in responses to real-life dangers to the facilities such as the theft of Special Nuclear Material, which is the highest concern at these sites, and recapture of the nuclear materials in the event of a successful theft. The wide variety of tests conducted routinely at DOE sites includes a limited number of sabotage scenarios. The report acknowledges that Mr. Levernier is correct in his observation that DOE focuses on theft in the majority of its exercises. However, it states that the focus on theft is consistent with maintaining a high level of protection of the type needed at DOE sites.

The report also states that all DOE sites have a recapture/recovery program as required by agency directives and that DOE tests for recapture/recovery capability. The focus of DOE's training and protective strategies, however, is to prevent the sites from being placed in a situation where recapture/recovery is needed. Nevertheless, the report contends that DOE runs tests which presume the site has failed to defend itself and must conduct a recapture/recovery

[4]Force-on-force testing are exercises in which site security members stand post and protect the facility against individuals posing as adversaries or attackers. Force-on-force testing is a part of the vulnerability assessment process; a formal exercise uses controllers and evaluators to assess the performance of the defense team and identify areas where refinement of the site's response is necessary including whether the site needs additional response personnel.

operation. In addition, the agency explains that changes to protection strategies have been made based upon the results of performance tests. The report notes that Mr. Levernier is not aware of the level of emphasis given to these exercises or of the changes that have taken place since his security clearance was revoked.

Additionally, testing by the Independent Oversight Office has emphasized recapture/recovery. However, the major focus of the protective strategy remains defending the sites and preventing the need for a recapture/recovery response. The report asserts that changes in the tactical strategies, along with additional training and oversight, have increased the assurance that DOE can accomplish its protective mission.

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In response to that threat, the report notes, interim policies refocusing on sabotage were developed and DOE sites increased their efforts in this area. The report states DOE sites have demonstrated their ability to protect against this threat. For security reasons, the report does not describe in detail the policies developed. Additionally, the new DBT will provide specific guidance on further developing the agency's response to the threat of sabotage.

Finally, the report notes that the Office of Independent Oversight and Performance Assurance includes radiological sabotage and recapture/recovery scenarios in its performance testing. The focus of this testing is to determine if the sites can protect against radiological sabotage and quickly respond to implement recapture/recovery actions.

Allegation

Mr. Levernier alleged that DOE uses obsolete equipment in its performance tests.

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MILES allows participants in force-on-force exercises to fire infrared "bullets" from the same weapons they would use in combat. It replicates the range and effectiveness of actual weapons systems approximating the adversary's capabilities. MILES also identifies casualties and records the exercise so personnel performance can be later analyzed. This allows the force-on-force teams to evaluate the protective force's performance as well as the losses suffered.

Mr. Levernier stated that MILES was now in its fourth generation and alleged

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He alleged that DOE's continued use of the outdated MILES equipment produced inaccurate reports regarding protective force readiness and ability to defend DOE's nuclear assets.

Report of the Department of Energy

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The report points out that MILES is only one of the tools used to validate tactics and keep personnel in a state of readiness. The report acknowledges that the version of MILES used may vary according to the purpose of the exercise.

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MILES technology has gone through a number of versions. The same laser technology is provided in all versions of the system; the majority of the changes have been to add additional weapons to the MILES arsenal. The latest changes include additional reporting capabilities and an assessment of which weapons caused damage to which adversary. Most DOE sites have purchased their own MILES equipment to allow them to conduct exercises when they deem it appropriate. The version of the MILES equipment used by a facility depends on the needs of the site and the level of use of the equipment.

The agency contends that the sites can meet their needs with the equipment they have and notes that when the equipment is due to be replaced, the latest version is purchased. At the time the report was written, three of DOE's major sites had upgraded to the fourth generation equipment. DOE acknowledges that the fourth generation equipment can be useful for the formal testing process of the Office of Independent Oversight and Performance Assurance and, thus, **DELETED** . Additionally, NNSA is evaluating the cost benefit of a large purchase of the latest generation of MILES equipment. The report notes that if the decision is made to purchase this equipment it will be budgeted and a system will be established for its allocation.

Allegation

Mr. Levernier alleged that DOE does not keep accurate records of protective force performance in these force-on-force exercises. For example, DOE does not keep records of losses sustained by the protective force, errors made by the protective force, fratricide or the killing of friendly personnel, by members of the protective force, or other violations of DOE's Deadly Force Policy. He also alleged that the personnel who evaluate the exercises are not adequately trained or qualified as evaluators and do not have a comprehensive understanding of the Deadly Force Policy, and that, at times, administrative staff have evaluated the exercises. Mr. Levernier alleged that these factors diminished the value of the evaluations.

Report of the Department of Energy

The report acknowledges that DOE does not compile the type of record-keeping information described in the allegation. Because some exercises have specific, narrow functions, the report states that the cost of gathering the type of record-keeping information described in the

allegation is not justified. According to the report, MILES exercises serve a number of purposes including training security force personnel in response tactics, validating strategic and tactical protection used at sites, and conducting performance tests. The purpose of some exercises is to understand or develop protective strategy. The results are used to modify protection approaches. During the testing of the final protection strategy, however, all the information is gathered in order to evaluate and understand the protective strategies. The report explains that errors noted by security personnel are typically corrected by the supervisory security personnel on site. Thus, the agency asserts that errors do not go uncorrected.

The report also acknowledged that administrative personnel have been used in exercises and evaluations. The report noted that while security personnel are always involved in MILES exercises, the number of exercises and the different purposes of those exercises require that additional personnel be used. It is the agency's position that using a diverse group of personnel enhances the value of the evaluations by bringing different points of view to the exercise.

The report explains further that DOE has a formal process, including the use of safety monitors, to ensure that the force-on-force exercises are conducted in a manner safe for handling weapons and ammunition. With respect to the training issues raised by Mr. Levernier, the report states that DOE guidance for planning MILES-enhanced force-on-force exercises requires that the Controllers/Evaluators receive formal training in their responsibilities. Tactically qualified personnel are generally assigned to Controller positions that require tactical knowledge, including the Deadly Force Policy, and to Evaluator positions. In addition, the report notes, some organizations, such as the Office of Secure Transportation, use tactical experts, including military personnel, to assist in evaluating the performance exercises.

Allegation

Mr. Levernier also alleged there were problems with the structure of the performance tests. He stated that the exercises did not replicate real adversarial situations and lacked vehicles driving at high speeds and violence of action simulating actual terrorist capabilities.

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He alleged that the tests also failed to compensate for the lack of surprise. Finally, Mr. Levernier stated that the protective forces who serve as adversaries lack the training necessary to simulate terrorist capabilities in these exercises.

Report of the Department of Energy

The report states that Mr. Levernier's information is incorrect. DOE limits the tools used by adversaries to the equipment and weaponry available on the world market as defined by the intelligence community. The report notes that DOE runs exercises which address the most severe adversary situations

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The report acknowledges that certain elements of an attack such as high speed, surprise, and violence of action cannot be tested through force-on-force exercises due to safety concerns. Thus, the dangers presented by those factors must be simulated. DOE is aware that simulation

places limitations on the effectiveness of the exercises. Given the safety concerns, the agency finds those limitations necessary and acceptable.

DOE addressed the issue of the adversaries used in the exercises. According to the report, DOE uses personnel from the Department of Defense (DoD) who are trained in adversary techniques as part of the evaluation of DOE sites. DoD cannot, however, provide sufficient personnel for all DOE sites. As a result, DOE also uses on-site personnel to conduct many exercises. Using DOE personnel in the exercise gives the adversary information that a regular adversary would not have. The report states that it has been argued this is an advantage to the adversary, but concludes that it is acceptable.

The report also summarizes other aspects of DOE's evaluation of the force-on force exercises. The Office of Independent Oversight and Performance Assurance uses a Composite Adversary Team of highly-trained security police officers from DOE and NNSA sites when conducting its force-on-force performance tests. The report emphasizes that these officers undergo additional training in the planning and conduct of offensive operations such as the use of rapid hard-hitting shock tactics, force multipliers, specialized weapons and explosive devices.

In addition, NNSA's iterative site analysis uses adversaries who have been selected for the exercise because their experience and knowledge is as close as possible to that of a potential adversary. The report states that this process requires the adversaries to identify what they would do at a particular DOE site, including how they would plan the attack and obtain and stage the materials. The only limitation placed on these adversaries is they must use the materials currently available on the world market. According to the report, this process helps DOE ensure that the overall security posture will meet the current threat. Finally, the report emphasizes that DOE has one of the most extensive force-on-force programs in the U.S. government.

Allegation

Mr. Levernier also alleged that no adjustment is made to the result of the performance test when the exercise is compromised or cheating is discovered, and that DOE does not investigate instances of cheating. He cites as an example an incident in 1999 involving a performance test for the Office of Transportation Safeguards conducted at Ft. Hood, Texas. In that case, he alleged, the protective force was discovered cheating, yet no investigation into the security breach was conducted, and cheating was not factored into the results of the exercise. Instead, he stated, DOE recorded the exercise as a "win" for the protective force. Mr. Levernier alleged that the failure to account for these variables in the results of the performance tests produces unreliable and artificially inflated test results.

Report of the Department of Energy

DOE responds that this allegation is incorrect. The report notes that it stems from an event which occurred during a joint training exercise with Texas law enforcement and emergency management, Fort Hood military, and other organizations at Fort Hood.

According to the report, during the exercise a member of the Special Forces team alleged that the defending team had cheated. The Special Forces member made the allegation twice, but refused to identify the individual who was cheating to the Exercise Director. An informal inquiry, which included all the exercise controllers, was conducted. No information supporting the allegation was found and the inquiry was closed. DOE maintains the incident was reviewed as fully as possible.

The report emphasizes that the allegation was taken seriously and that cheating is not tolerated.[5] No additional action could be taken in that case due to the lack of information. The report also clarifies that the exercise was not part of a formal validation process. Rather, the goal of the exercise was to improve the relationship between state law enforcement and emergency management. Therefore, it is the agency's contention that even if cheating occurred at some level during the exercise, it did not artificially inflate the performance test results.

Allegation

Mr. Levernier alleged that DOE does not routinely use computer modeling of protective force tactics to evaluate protective force engagements. He stated that computer modeling is an effective means for evaluating and simulating protective force responses to worst case scenarios. Mr. Levernier alleged that when DOE does conduct computer modeling, the agency uses an older system known as the Joint Tactical Simulation (JTS) system. According to Mr. Levernier, DOE is aware of significant errors in the JTS database which render it an inadequate tool for computer modeling.

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Report of the Department of Energy

DOE responds that it uses computer evaluations and is working on obtaining the next generation of computer modeling to support its evaluations of the sites. DOE acknowledges that

[5]Since receipt of DOE's report, I note that the IG has issued a report entitled, "Protective Force Performance Test Improprieties" (DOE/IG-0636) dated January 2004. The report found that a performance test conducted on June 26, 2003, at DOE's Oak Ridge facility was compromised. A request by the site manager was the impetus for the IG investigation. The IG investigation also found that over an extended period of time there has been a pattern of actions by site personnel that may have negatively affected the realism and reliability of performance tests at Oak Ridge. DOE concurred with the IG's findings and recommendations and NNSA and the Site Office Manager provided information on corrective actions that had been initiated or planned. Mr. Levernier's allegations did not include any specific information regarding cheating at Oak Ridge.

Mr. Levernier is correct that the JTS system was one of the first evaluation tools and has a very basic computer simulation. The errors in the JTS system dealt with the computer probability calculation of firing certain weapons and hitting the target. While those errors have been corrected,

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The report emphasizes that computer simulation is one tool and that it can be cost-effective for developing and evaluating a variety of potential protection strategies. DOE is trying to develop a computer simulation software which uses the type of computer engine found in commercial gaming software. The report notes that because DOE's simulations involve classified information, the transition from commercial to government use could be difficult.

Allegation

Mr. Levernier alleged that the cumulative effect of these deficiencies degraded the value of the performance tests. Thus, he alleged, DOE's reliance on the performance tests was misplaced and created a false sense of security regarding the safety of Class "A" facilities. He also stated that it was misleading for DOE to use the results of the performance tests as the basis for its annual report to President and Congress on the state of the agency's ability to protect its facilities and nuclear assets.

Report of the Department of Energy

The report concludes that Mr. Levernier's information is outdated and does not reflect the agency's current efforts. DOE acknowledges that there is no perfect security system but nevertheless states that it has taken the necessary steps to ensure the protection strategy; the protections in place provide a high-level of assurance that DOE can protect the materials in its custody. In particular, the report states that the force-on-force testing meets the agency's requirements and has been noted by independent reviews as some of the best in the country. The remainder of the security components, computer simulations, tabletop exercises, and limited scope performance tests ensure that DOE assets are protected.

3. Deficiencies in the Safeguards and Security Program

Allegation

Mr. Levernier alleged that, overall, oversight of safeguards and security at nuclear sites is increasingly deficient and inaccurate due to the lack of a centralized inspection process managed by headquarters. He alleged that there are several significant deficiencies in DOE's safeguards and security program. Under that program, the contractors at the local facilities conduct self-assessments which cover the following areas: 1) program management, 2) protection program operations, 3) information security, 4) nuclear materials control and accountability, and 5) personnel security. The contractor uses the self-assessment to manage the facility and as the basis for corrective actions or changes in the facility's operations.

First, Mr. Levernier alleged that the program is unreliable because it is too dependent upon the self-assessments of contractors and local DOE officials. He alleged that the process is deficient because it fails to include thorough, regular, independent inspections by DOE headquarters personnel.[6]

To support his allegations, Mr. Levernier stated that, between 1995 and 2000, under the former Quality Assurance program managed by DOE Headquarters, he consistently noted facility vulnerabilities that should have been identified in the safeguards and security surveys, but had not been. Some of the vulnerabilities he noted included situations where protective force responders did not know where to go when there was an emergency, did not know when to use deadly force, and did not know where the Special Nuclear Material was kept at the facility. Despite these deficiencies, the facilities reported successful performance tests in the safeguards and security surveys.

In addition, during the same time period, Mr. Levernier personally reported, in classified documents, numerous high-risk conditions and vulnerabilities to senior DOE safeguards and security managers. These classified reports involved several facilities but primarily focused on the Office of Transportation Safeguards, the Rocky Flats Environmental Technology Site, and the Los Alamos National Laboratory. Mr. Levernier states that, to date, he is not aware of any actions taken by DOE to resolve those high-risk conditions.

By way of further example, Mr. Levernier stated that from 1986-1991 when independent oversight inspections by DOE headquarters were frequent and comprehensive, approximately 1,000 findings and deficiencies were noted annually. During this same timeframe, the DOE Safeguards and Security surveys identified approximately 4,000 findings and deficiencies annually. Since 1991, the number and scope of independent inspections has steadily decreased and the findings and deficiencies identified have dropped to approximately 250 annually. The deficiencies identified by DOE's Safeguards and Security surveys have also dropped to approximately 1,000 annually. Mr. Levernier believed that the sudden decrease showed that without the regular independent inspections, DOE's inspection process may not be reliable. Finally, Mr. Levernier states that the inspectors recommend the composite security ratings for the facilities, but local DOE managers may assign another rating if they so choose. This highlighted the need for independent oversight of this process that could establish one final, official security rating based on one set of standards.

Report of the Department of Energy

The report states that, in general, Mr. Levernier misinterpreted data and, in other instances, ignored existing oversight capability. The report explains that DOE has a centralized inspection process which consists of two separate organizations: the Office of the Inspector General (OIG)

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[6]Mr. Levernier noted that there is a third level of review managed by the Office of Independent Oversight and Performance Assurance (IOPA) at DOE Headquarters which reports directly the Secretary. However, those inspections are not regularly scheduled. Moreover, because IOPA only conducts inspections intermittently, some major facilities have not been comprehensively reviewed by DOE Headquarters for years.

and the Office of Independent Oversight and Performance Assurance (OA). During 2001 and 2002, the OIG conducted seventeen reviews/inspections concerning security matters.

OA reports directly to the Secretary and is responsible for independent oversight and assessment for all DOE safeguards and security. OA is also responsible for inspecting facilities with Category I quantities of Special Nuclear Material on a regular basis. The frequency of inspection is dependent on the facility's performance during the last formal review; the minimum frequency is bi-annual. However, in the case of facilities with a specific concern or weakness, the assessments will be more frequent.

DOE explains that it uses a graded level of oversight. The first level is the contractors who conduct a self-assessment of the safeguards and security program and implement security measures at the facility. DOE personnel are also assigned on-site responsibility for security. The DOE official who manages the facility is required to conduct an annual assessment of the contractor.

DOE disagrees with Mr. Levernier's assertion that the agency only uses the contractor's assessment. Instead, the report states that the manager conducts an independent site review. Over the past two years the independent review process has changed from a two-week review to a continuous process which occurs during the whole year. The results of this independent review are then summarized and compared against the contractor's self-assessment. They are also used as part of the contractor's performance appraisal.

NNSA is establishing oversight and assessment policy that places more responsibility in the field offices. Headquarters personnel, in turn, are responsible for ensuring that the field office is operating appropriately. The report notes that NNSA also uses reviews from the OIG and OA as part of its oversight of the federal field officials and the contractor.

The report continues stating that the security conditions and vulnerabilities described by Mr. Levernier are outdated and have been superseded by evaluations and protection strategies. Further, the report asserts that security vulnerabilities were corrected in a timely manner and that Mr. Levernier would not be aware of those actions due to the loss of his security clearance.

In response to Mr. Levernier's allegation that the decrease in number of findings, or deficiencies, detected at facilities since 1986 indicates there is a problem with security oversight, DOE states that he fails to consider the significant consolidation of both facilities and activities that has taken place. Two facilities have been closed, two others are in the process of closing and another no longer tests nuclear weapons. Three additional facilities have reduced the number of on-site locations that house sensitive material. Thus, the report concludes, it should be expected that fewer facilities would result in fewer inspections and fewer findings.

The report also responds to Mr. Levernier's allegation regarding facility ratings provided by field offices. According to DOE, his allegation relates to a specific event which occurred at the Los Alamos facility. OIG investigated in May 2000 and found that there were legitimate reasons the facility's rating was changed and that no violations of law or regulation occurred.

In conclusion, the report states that DOE's approach places responsibility for the inspection and evaluation process in two organizations, the OIG and OA, rather than the quality assurance office Mr. Levernier ran prior to his reassignment. The report also emphasizes that there are professional differences of opinion as to what constitutes high risk, thus, Mr. Levernier's opinion may differ from those of DOE officials charged with the responsibility and authority for the oversight programs.

Allegation

Mr. Levernier alleged that the effectiveness of the inspection process was diminished because the facility vulnerability assessments prepared by contractors are not shared with the inspectors conducting the annual safeguards and security surveys. The vulnerability assessments contain the key assumptions about a facility's weaknesses used to build a protective strategy. These assumptions concern issues such as the probability of detecting weapons, and the time necessary for an adversary to gain entry to a vault, acquire the nuclear material, and escape. The assumptions also concern the amount of time necessary to create an improvised nuclear device or sabotage the facility.

Mr. Levernier maintained that DOE headquarters no longer conducts an independent review of vulnerability assessments developed by the contractor. Thus, DOE does not independently verify that contractors have identified and mitigated all risks to ensure security at its nuclear facilities.

Report of the Department of Energy

The report stated that Mr. Levernier's allegation relied on dated information. DOE inspectors, which include federal field office personnel, the Inspector General, or the Office of Independent Oversight and Performance Assurance, have access to the vulnerability assessments. Further, the federal site personnel assist with the development of the vulnerability assessment and the approval of the SSSP, which relies on the vulnerability assessment. The OA also participates in the iterative site analysis process, which is one of the main analytical tools of the vulnerability assessment. The report specifically states that there have been no issues raised by any inspectors over access to vulnerability assessments.

Allegation

Mr. Levernier stated that, in addition to these problems, the annual safeguards and security surveys are conducted by employees who perform the assignment only as an adjunct to their regular duties. In other words, the inspection duty is an "other duty as assigned." As a result, DOE inspectors do not always have the appropriate expertise and training to properly evaluate the facilities. According to Mr. Levernier, as of August 2000, less than fifty-percent of the inspectors had received the training. Moreover, Mr. Levernier noted that because the inspection duties are considered ancillary responsibilities, the inspectors themselves were not eligible for the training. As a result, the lack of training was a continuing problem.

Report of the Department of Energy

According to the report, in fiscal years 2001, 2002, and 2003 up to May 29, 2003, the date of the report, 164 DOE personnel had taken the basic survey training course and 295 had taken the introductory course to survey procedure. An additional 69 personnel have taken advanced courses. The inspection team is made up of additional experienced and qualified personnel to ensure all areas are addressed. The report states that there may be some employees who are on the team as part of on-the-job training, but that these participants are limited in number. In addition, the report points out that additional resources are available to augment the team when necessary and that headquarters, other site resources, and contractor resources have been used to provide expertise when necessary.

The report goes on to say that Mr. Levernier's allegation appears to be based on an issue raised in 1999 regarding the reviews conducted by the Albuquerque Operations Security Office. The report states that the issue of training was addressed in a DOE Inspector General report[7] in May 2000, and that the site requires training for all inspectors prior to participating in the review teams.

Allegation

Mr. Levernier stated DOE does not conduct unannounced inspections as a component of its safeguards and security program. According to Mr. Levernier, certain activities such as protective force operations, including whether patrols are being conducted as required, and response to alarms should be reviewed and evaluated on an unannounced basis. Mr. Levernier alleged that the failure to conduct unannounced inspections resulted in inadequate evaluations of facility defense operations and artificially high estimates of defense preparedness.

Report of the Department of Energy

DOE responds that the allegation is fundamentally incorrect because it implies that the security force will not follow the rules unless there is someone continuously watching them. DOE acknowledges that it does not require, nor routinely conduct unannounced force-on-force inspections because of the difficulty conducting these inspections and because of safety concerns. Instead, DOE has a continuing survey program that it describes as the equivalent of unannounced inspections. The continuing survey program involves random testing of selected security force responsibilities. A number of DOE sites have begun using this program.

In addition, the report states that DOE's security forces are highly trained and motivated and operate with a high level of professionalism. The implications of Mr. Levernier's allegation are faulty. Finally, the report emphasizes that DOE's unannounced inspections are consistent with the approach used by many government agencies noting in particular that DOE runs more exercises than other agencies that protect similar materials and information.

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[7]The report is entitled, "Summary Report on Inspection of Allegations Relating to the Albuquerque Operations Office Security Survey Process and the Security Operations" Self-Assessments at Los Alamos National Laboratory." Report number DOE/IG-0471.

Allegation

Mr. Levernier also alleged that the Safeguards and Security Information Management System (SSIMS), DOE's tracking system for deficiencies and corrective actions needed at DOE facilities, is not used and updated in accordance with DOE Order 470.1. Order 470.1 requires that SSIMS reflect facility information, activity information and survey information. It also requires that SSIMS entries be made as conditions at the facilities change and corrective actions are taken. Mr. Levernier alleged that the responsible officials frequently failed to enter findings in SSIMS and devise and implement corrective actions as needed. The failure to develop and implement corrective actions for noted deficiencies, he alleged, unnecessarily degrades national security.

Report of the Department of Energy

The report explains that SSIMS is an administrative tool designed to assist management in tracking findings developed in the field and by Headquarters. Federal field personnel are responsible for monitoring the contractor's performance and corrective actions. DOE acknowledges that there have been some delays in updating the system, but states that a lack of documentation in SSIMS does not indicate there is poor security or that the safeguards and security programs are unsound.

With respect to specific incidents referenced by Mr. Levernier, DOE states that those matters have been closed out on the SSIMS system. Further, DOE has taken steps to computerize the incident response system so that it serves both the field office and headquarters better. However, the present SSIMS system has not kept up with the changes. The report states that DOE is attempting to make the new system more useful to managers for tracking incident reports, but this is an ongoing effort.

Allegation

Mr. Levernier alleged that the OIG identified serious deficiencies in DOE's assessment and management of security risks in September 2000, and that those issues remained unresolved. Mr. Levernier alleged that DOE had not implemented new safeguards and security processes set forth in the OIG report as solutions to the problems identified; established a policy on what is required when moderate, unacceptable or high-risk conditions have been identified; developed a dispute resolution process to resolve technical difficulties concerning risk determinations, or resolved the unacceptable or high-risk conditions in the allegations made to the OIG.

Report of the Department of Energy

The report identifies the OIG report as the "Summary Report on Allegations Concerning the Department of Energy's Site Safeguards and Security Planning Process." DOE notes that the OIG report stated the inspection revealed that the allegations primarily concerned an SSSP process that had been phased out. The OIG report noted further that if the SSSP process were restructured, as DOE planned to do, the restructuring could resolve the disagreements that affect SSSP risk determinations.

DOE reports that, in fact, the SSSP process has been restructured. The restructuring plan was finalized in March 2001, but the terrorist attacks of September 11, 2001 delayed the publication of the new process. DOE also states that the creation of the NNSA clarified some of the organizational issues. The law provides that the Safeguards and Security policy is to be developed by the Office of Security who reports directly to the Secretary. NNSA is responsible for the implementation of policy for the nuclear weapons complex and risk determinations. Finally, the report states that because the process requires the federal employees responsible for risk acceptance to sign the SSSP, the issue of resolving disagreements has been addressed.

4. Security Concerns at the Los Alamos National Laboratory

Mr. Levernier alleged that there are serious security problems at the Los Alamos National Laboratory (Los Alamos). Los Alamos is located approximately 85 miles west of Albuquerque and has multiple, distinct security areas connected by public roads. Each area is a stand-alone facility for the purposes of security and protection. Each area is staffed by its own guards who provide security at the points of entry. Mr. Levernier noted that the Special Nuclear Material is distributed among several areas. Most of the storage facilities are not hardened, nor are many of the vehicles used by the protective personnel who patrol Los Alamos.

Mr. Levernier observed that because public roads and mountainous terrain are part of its physical layout, Los Alamos is a more vulnerable facility than one which is contained in one area. He explained that there are only minimal delay mechanisms built into the facilities to stop or stall intruders from entering the distinct, secure areas. He also stated that Los Alamos has only one protective response team tasked with protecting and defending the entire area in the event of an attack.

Pursuant to DOE Order 470.1, a facility's protective force must be able to respond to the area under attack before the adversary gains entry to the targeted building. Mr. Levernier provided information that the protective force at Los Alamos frequently lost the force-on-force exercises, thereby failing to defend the facility.

An additional concern was the remote location of some of the technical areas in a canyon that posed additional hurdles to the defense of Los Alamos. He stated that these factors complicate the job of the protective response team because if they are drawn to the site of a disturbance that is merely a diversion, they may be trapped and unable to respond to a real attack in a different secure area. Given these factors and the size of the Los Alamos facility, Mr. Levernier alleges that the security was inadequate to protect and defend the facility and its nuclear assets. In addition, he alleged that the protective response team cannot respond in a manner that complies with Order 470.1.

Report of the Department of Energy

DOE acknowledges that the Los Alamos facility is difficult to protect, but states that Mr. Levernier's allegation that security is inadequate is not correct. The report states that over the last two years significant changes have been made to the protective strategies employed at Los Alamos. For instance, the number of locations of concern has been reduced. In addition, the current protection strategy allows the site to provide the level of protection required by the Design Basis Threat. Because Mr. Levernier no longer has a security clearance, he is not in a position to know what types of security changes have been implemented at Los Alamos.

The report states that the changes have addressed the concerns identified by Mr. Levernier. In addition, the report notes that recent inspections have verified that the level of protection provided meets DOE requirements. The report notes that as a result of a study conducted to identify the best location for some of the experimental facilities currently at Los Alamos, a determination has been made that the experimental projects should be moved to the Nevada Test Site. The exact time of this move has not yet been decided; the report concludes that the security of the new facilities will be easier because they will be constructed with security in mind.

Deficiencies and Security Risks at the Office of Secure Transportation

Mr. Levernier also alleged security deficiencies in the operation of the Office of Secure Transportation[8], the office responsible for the transportation of nuclear materials throughout the U.S. As noted previously, those allegations were transmitted to the National Security Advisor and the Congressional Intelligence Committees. DOE provided OSC with a response to those allegations as well. That portion of DOE's report is provided under separate cover. However, because Mr. Levernier no longer holds a security clearance, he did not review or comment on the agency's response to this allegation.

The Whistleblower's Comments

Mr. Levernier does not believe that DOE's report meets the requirements of 5 U.S.C. § 1213(e)(2)(b). He states that the agency takes at face value reassurances from the Office of Independent Oversight and that DOE did not offer any evidence to support its reassurances that the identified security risks had been corrected.

In support of his allegations, Mr. Levernier highlights portions of a report issued by the General Accounting Office (GAO) in May 2003, entitled, "National Security: NNSA Needs to Better Manage Its Safeguards and Security Program," GAO report number GAO-03-471. He includes in his comments GAO's findings and problems identified. He also believes the GAO report supports his allegations and discredits DOE's report.

Mr. Levernier states that DOE's detailed descriptions of the vulnerability assessments, computer modeling, protective force performance testing, explosion detection program and

[8]Formerly the Office of Transportation Safeguards.

technology, Design Basis Threat, risk management and safeguards and security program are generally accurate. However, he points out that DOE failed to provide evidence that the programs have been fully implemented and their effectiveness tested, citing the GAO report as support for this statement. He acknowledges that some of the information he disclosed is dated and that the agency has made security changes of which he is not aware. Nevertheless, based on the information that is available to him, he believes the risks posed to DOE's national security assets are unacceptably high. He remains particularly concerned with DOE's admission that the agency has conducted only one performance test beyond 1999 and prior to the issuance of the new Design Basis Threat in May 2003. Thus, Mr. Levernier concludes that because the facilities defense strategies have not been tested against the new Design Basis Threat, DOE's ability to defend the facilities and nuclear assets is unknown. Therefore, he believes "America's safety from terrorists remains indeterminate."

Mr. Levernier also believes that the scope and magnitude of security problems he described continues and that the danger to public health and safety remains. The events of September 11, 2001, and the increase in terrorist risk that followed have only heightened concerns about the deficiencies in security and pose an even bigger threat. Moreover, he believes the lack of sufficient funding to address the new Design Basis Threat until Fiscal Year 2006 and the estimated two to five years necessary to implement the security measures creates an unacceptable window of vulnerability. Mr. Levernier contends that if DOE does not abandon its denial that security problems exist, the nation will continue to be vulnerable to terrorist attack.

Mr. Levernier's second set of comments submitted on February 10, 2004, focused on a report issued by DOE's Office of Inspector General (OIG) on January 23, 2004, entitled, "Protective Force Performance Test Improprieties." This report found that a performance test conducted on June 26, 2003, at the Y-12 National Security Complex in Oak Ridge, Tennessee, may have been compromised. The OIG's report goes on to state that several current and former protective force personnel provided testimony that since the mid-1980s, security personnel have engaged in a pattern of action which may have compromised the reliability of the site performance testing. The OIG noted that suspect action included sharing controlled information with protective force personnel prior to the performance test itself.

Mr. Levernier comments that his disclosure stated that cheating on performance tests was a pervasive problem at DOE. Given the findings and conclusions of the OIG's report, he states that DOE's report in this case is false and that its investigation into the allegations he presented was inadequate and insufficient.

In his final set of comments provided in November 2005, Mr. Levernier highlights an independent review of NNSA conducted by Retired Navy Admiral Richard Mies. At the request of NNSA Administrator Brooks, Admiral Mies led a panel which reviewed security structure, organization, interrelationships, policies, procedures and practices. The team lead by Admiral Mies reviewed security measures in the field and at NNSA headquarters from October 2003 to April 2004, and issued its final report in May 2005 (Mies report).

The Mies report made comprehensive recommendations on virtually all facets of NNSA and DOE's operations as they relate to the security of nuclear research facilities and nuclear

materials. In his comments, Mr. Levernier states that the Mies report validates the disclosures he made regarding, among other things, flawed vulnerability assessment and performance tests, lack of qualified personnel for security and performance tests, and lack of comprehensive security oversight. Mr. Levernier's analysis of the Mies report, and the Mies report itself are attached along with Mr. Levernier's comments.

Special Counsel's Comments and Conclusion

I have reviewed the information presented by both the agency and the whistleblower in this case. Given the information provided and the complex and comprehensive nature of the allegations, I am unable to determine whether the agency's findings appear reasonable. The agency has complied with its statutory obligation to investigate and provide a report to this office. After reviewing the report, the whistleblower submitted comments and included the additional reports he cited. The totality of the information presented calls into question the agency's findings that it has adequately met the security standards for protecting the nuclear research facilities and assets.

Mr. Levernier presented OSC with broad allegations regarding DOE and NNSA's management of personnel and security issues as well as the culture of DOE and NNSA and its negative effect on the protection of the agency's nuclear research facilities and nuclear assets. These allegations represent serious issues which are still relevant today. As Mr. Levernier himself has noted, since he filed his disclosure with OSC, a number of other reports have been written which are critical of various aspects of DOE and NNSA's operations. Many of those reports, echo his own concerns.

The DOE is, at times, general and vague. Some of the generalities were necessary due to the secure nature of the information involved. While the report does not substantiate Mr. Levernier's allegations, it does acknowledge the validity of some of them. In addition, some of the conflict between Mr. Levernier and the agency can be characterized as a difference of professional opinion on such matter as risk assessment and the allocation of agency funds. Nevertheless, given the wealth of information that seems to chronicle serious problems at DOE and concerns with the agency's ability to protect the assets under its control, I cannot determine whether the agency's findings appear to be reasonable.

In its report on NNSA issued in May 2003, GAO identified areas of concern that still exist at DOE and NNSA. GAO found that that NNSA was not fully effective in managing its safeguards and security program due to deficiencies in four areas: 1) defining clear roles and responsibilities for NNSA management, 2) assessing sites' security activities, 3) overseeing contractors' corrective actions, and 4) allocating staff. The report emphasizes that its focus was not evaluation of security measures. Nonetheless, it finds that the lack of clear management roles may mean that contractors are not working to maximum advantage to protect nuclear weapons sites.

With regard to the Oak Ridge facility and the cheating uncovered by the OIG in its report of January 2004, I agree with Mr. Levernier that this conduct presents serious problems and consequences for the reliability of protective force performance tests. In this case, however, the

allegations he presented did not include information regarding specific instances of cheating, or cheating at certain sites. Rather, Mr. Levernier made a general allegation regarding cheating and provided examples which had already been reviewed by DOE. While it is disappointing that the NNSA interviews failed to discover the problems at Oak Ridge later identified by the OIG, based on the general allegation provided to DOE, I cannot conclude the agency's report is non-responsive on this issue.

In September 2005, NNSA Administrator Brooks issued a statement praising the Mies report. The report catalogues a series of problems faced by NNSA highlighting, among other things, the lack of qualified security personnel, lack of protocols and training, insufficient performance drills, and difficulties in meeting the requirements of the new Design Basis Threat. Administrator Brooks noted in his statement that more than 70 percent of the report's recommendations had been implemented and that NNSA expected to implement the remaining recommendations by the end of 2005.

Given the nature of the materials DOE and NNSA are charged with protecting, the continuing concerns with the agencies' security and protective force capability are particularly troubling. Due to these outstanding concerns, I recommend that an independent Department of Defense assessment team conduct random visits to select DOE nuclear facilities. Additionally, I recommend that the assessment team conduct unannounced drills to determine the effectiveness of DOE's security and safeguards against terrorist infiltration or attack and determine the effectiveness of the policies and procedures described by DOE.

In sum, Mr. Levernier and many others raise continuing concerns with DOE and NNSA's management and effectiveness of its security program. The reports and evaluations cited by Mr. Levernier show that the agency is under considerable scrutiny and that it continues to implement changes to its management and operations based on those evaluations. In addition, I note that while many of the security measures enacted post September 11, 2001, were untested, the additional security actions described in the report reflect the agency's efforts to address the need for increased security in the period before the new Design Basis Threat was completed.

Conclusion

I am troubled by the questions which remain regarding the agency's safeguards and security program and believe that the matter would benefit from additional scrutiny. The conclusions of the GAO, OIG, and Mies reports, published after DOE wrote its report in this case, cast doubt on the conclusions of DOE's report and the confidence with which DOE asserts its ability to protect the nuclear assets entrusted to its care. Thus, based on the representations made in the agency report and as stated above, I have concluded that I am unable to determine whether or not the agency report contains all of the information required by statute or whether its findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), a copy of the report, including a classified response to the allegations regarding the Office of Transportation Safeguards, and the whistleblower's comments have been sent to the Chairman of the Senate Committee on Energy and Natural Resources and to the Chairman of the House Committee on Energy and Commerce.