INTEROFFICE MEMORANDUM

Idaho National Laboratory

Date: April 29, 2011

To: [redacted]

From: [redacted]

Subject: Report of Investigation into Mark Siciliano's Concerns

Mr. Mark Siciliano has voiced concerns over several events that occurred in the National and Homeland Security Science and Technology directorate (N&HS). Most, if not all, of those concerns have been investigated by N&HS management and by at least one separate and independent organization. You requested that I take another independent look and evaluate the concerns in a comprehensive and consolidated manner for potential legal or regulatory issues.

I have concluded that Mr. Siciliano has no valid legal claim, has not been retaliated against, and has no legal or regulatory basis for his concerns that can be substantiated. This letter will summarize the legal results of each of his concerns. However, it is my opinion that Mr. Siciliano has been poorly managed, has not received effective communications, and has legitimate differences of opinion with N&HS management policies. These issues are within the purview of the company management to evaluate, and will not be addressed in this letter.

I selected a team of investigators to collect information and report back to me. I chose [redacted] the [redacted] for the Department of Energy, to lead the investigation. [redacted] would have access to information on any security investigations or follow-ups that were done or were underway. In addition, he was uniquely qualified to evaluate the security aspects of Mr. Siciliano's concerns. I also chose [redacted] to assist. [redacted] is currently on assignment as [redacted] to you. She has a strong operational background, familiarity with the Laboratory processes and procedures, and is well known and liked. In her current position, she would be free from senior management influence if any manager might be inclined to exercise that influence. Given her long history at INL, she is trusted by many people and was more likely to elicit honest responses from people within the N&HS organization. [redacted] and [redacted] met with Mr. Siciliano and together they agreed on a comprehensive list of his concerns. That list was finalized and signed by Mr. Siciliano on January 10th of this year. That list was the basis of the investigation. It was understood that if Mr. Siciliano had any subsequent concerns, the concern would be discussed and it would be determined whether to add the concern to the list.

Since the preparation of the list, Mr. Siciliano raised the issue of facility access by a person that was a U.S. citizen and who also held Iranian citizenship. The issue was reviewed by security, export control, management and legal. It was determined that under the regulations, his U.S. citizenship controlled and that the individual had adequately disclosed the situation. It was

appropriate for Mr. Siciliano to raise the concern. The concern was satisfactorily resolved and the issue closed. As a result, this concern was not added to the list. No other concerns have been considered for addition.

Concerns that were investigated and adjudicated by the Department of Energy Office of Hearing Examiners were not reopened; however, I asked the investigators to: 1) determine if there were any ancillary issues or 2) if there was any new information that could be uncovered that might modify or change the company's position. For those concerns, neither was found.

The investigation is legally privileged and was conducted as such to afford employees maximum opportunity for candor. This letter and the attached results summary are not privileged and may be shared with whomever you would like. If you have any further questions, please contact me.

Attachment.

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A summary of the sixteen issues and disposition of them is included below:

1. [redacted] failed to report or fully investigate the potential unauthorized removal of classified material from the INL by a subcontractor.

   The findings were consistent with those of the DOE-ID Employee Concerns manager that also inquired into this issue. She concluded BEA followed the appropriate procedures and applied the reasonable amount of investigative rigor to ensure there was no compromise of classified information.

2. N&HS management was provided with recommendations to improve security performance in October 2008, yet failed to act on them in a timely manner. This inaction resulted in a number of security infractions.

   The 10 CFR 708 complaint was dismissed relative to this issue based on Mr. Siciliano's suggestions being viewed as "debatable" and no factual basis was found to consider N&HS management as culpable for gross misconduct. Specifically, Mr. Siciliano had no employment impact that could be related to his disclosures. Many of his suggestions were implemented in the Corrective Action Plan for the IMI-1 security incident.

3. Mr. Siciliano was investigated for a security incident within N&HS that occurred before he was an INL employee. He believes he was a target for intimidation and harassment based on his reaction and response to the investigation of his department's employees.

   Mr. Siciliano and many other employees objected to wording on a DOE reporting form. It has been agreed that the form language was misleading and the form has been subsequently changed. Mr. Siciliano has not had any employment impacts related to this event, in fact, the event occurred before Mr. Siciliano was an employee. If there had been an impact, it is unlikely that Mr. Siciliano would have been offered employment.

   In March 2009, Mr. Siciliano's direct reports were involved in an IMI-2 investigation that required each of them to submit a Report of Security Incident/Infraction form (Form DOE F 5639.3). The form required them to sign as the "person responsible for the infraction" during the investigation phase, which caused them some concern. Mr. Siciliano was then required to fill out a section on each form titled "Corrective action taken, to include disciplinary action, if applicable." Mr. Siciliano's responses on these forms caused some concern among BEA Security management personnel. Subsequently, BEA Security management brought the issue to [redacted]*, who in turn passed the information to Mr. Siciliano's immediate manager for follow-up discussion. The IMI-2 investigation was closed out and a report was written dated March 20, 2009, resulting in no infractions given.*

   Approximately 30 days later, the BEA Security investigator was mandated by his management to issue Mr. Siciliano a Report of Security Incident/Infraction form. The investigator disagreed with this because the event had been closed and furthermore, Mr.

Siciliano was not an employee of BEA when the event occurred. Security management insisted since they were concerned whether or not the employee understood his management responsibilities as it related to security and how he was portraying his personal security beliefs to his subordinates.

Given the security environment at the time, it is acknowledged that Security management was concerned with Mr. Siciliano's perceived negative response. There were growing concerns regarding an increase in N&HS security issues and N&HS management ownership of these issues. It is not only the right, but the responsibility of Security management to address these concerns; however, Security management made a poor choice to use the same form to which Mr. Siciliano objected previously.

The findings were consistent with the results found in the review performed by BEA Employee Concerns in March 2010.

4. Mr. Siciliano raised a concern to N&HS management about the DOE Security Incident/Infraction form (DOE F 5369.3). He was told to be quiet about it and not make it an issue. The form was later revised, incorporating the suggestions made by Mr. Siciliano.

   Even if taken in the light most favorable to Mr. Siciliano, this is not a legally actionable complaint because he had no employment impacts. In fact, this action occurred before Mr. Siciliano was an employee.

   Mr. Siciliano claims [redacted] *his* [redacted]*, told him to be quiet and not to make an issue of the infraction form.* [redacted] *admitted in his statement to BEA Internal Audit that between twelve and sixteen BEA employees came to him with complaints about the form and how it was being used, but he stated to the investigation team that he was not aware that Mr. Siciliano was told to be quiet and not make an issue out of it. More specifically, he denied he ever made such a comment to Mr. Siciliano.*

5. Following a management self-assessment performed after numerous N&HS security incidents, the department managers were asked to provide input to improve N&HS management effectiveness. These proposed solutions were presented to N&HS senior management, but no action was ever taken on any of the proposals.

   Determination of whether to implement an action is wholly within management discretion and is not legally actionable.

   The 10 CFR 708 complaint was dismissed relative to this issue because it was determined it did not fall within the definition of a protected disclosure.

6. [redacted] chaired a meeting for UB2 building residents to discuss security incidents. Mr. Siciliano felt his department was being wrongfully blamed for the incidents. As a result, several "verbal exchanges" occurred

during and after the meeting. Mr. Siciliano and other managers claimed that [redacted] behaved unprofessionally.

Following a number of security issues, a security meeting was held at UB2 with the N&HS residents in August 2009. [redacted] *led the meeting with the intent to solicit employee opinion as to why the events were occurring and to determine strategies for prevention. The meeting quickly became confrontational. According to personnel interviewed, both Mr. Siciliano and* [redacted] *displayed unprofessional behavior. While optimum management behavior may have not been displayed during and after this meeting, this does not rise to the level of an infraction or does not fit the definition of retaliatory behavior.*

The 10 CFR 708 complaint was dismissed relative to this issue because it was determined it did not fall within the definition of a protected disclosure.

7. Mr. Siciliano received a derogatory mid-year review in 2009 with eight weeks left in the reporting cycle. His previous annual review was very positive and there was no indication that this review would be negative.

   Mr. Siciliano was not singled out for a mid-year review. The negative feedback was factually accurate and referenced a change in his behavior during this period.

   In July and August 2009, N&HS senior management directed all managers to perform mid-year reviews for all N&HS employees due to an increased number of security issues. After these were performed, [redacted] *performed a review of each manager's evaluation. This is the first time mid-year reviews were mandated and in many cases performed. During interviews, N&HS management and Human Resources representatives recognized that this was something that could be improved upon.*

   When he met with his manager for this mid-year review in August 2009, he received negative feedback concerning his defensive attitude and his lack of professionalism in written communication. Our investigation found concrete email evidence and witnesses to events that corroborated this feedback.

   Previously, Mr. Siciliano received a very positive annual review and was told he was the number one department manager in N&HS. He also received a bonus and merit pay increase in 2008.

8. Mr. Siciliano informed [redacted] and [redacted] that [redacted] failed to report his foreign travel through appropriate channels and asked them to follow through with reporting; he received no feedback that this had been accomplished.

   This issue was thoroughly reviewed by the Idaho Counterintelligence Field Office and deemed not to be of further interest.

Although [redacted] failed to report a foreign trip to the FIE SSO as required, he did comply with some of the reporting requirements for the questioned trip. In other words, he was not attempting to conceal his foreign travel. The trip was for official INL business and numerous individuals were aware of it, to include [redacted] At the time, the reporting process for SCI holders was problematic and confusing; it has subsequently been improved so a traveler can declare a foreign trip to just one of the required organizations or individuals and the information will be forwarded to all the other interested and required entities. N&HS management did not cover up the matter and did report it to the appropriate organization.

Employees are encouraged to report issues, Mr. Siciliano is commended for reporting his security concern. Although there is no obligation by BEA or the DOE-ID Operations Office to provide him specific feedback relevant to their investigative actions, a simple response to Mr. Siciliano from his management chain would have been helpful. However, since that did not happen, it left Mr. Siciliano to believe the matter had been swept under the carpet.

9. [redacted] made a decision in November 2009 to divest itself from a proposed scope of work at an off-site facility due to perceived risk. This decision continues to impact customer relations and portfolio today.

   The decision to accept or not accept, to pursue or not pursue, particular work is wholly within management discretion and is not legally actionable.

   The DOE-ID Employee Concerns review in March 2010 and the 10 CFR complaint found Mr. Siciliano's claim to be unsubstantiated. This finding was based on the accepted understanding in written procedures that BEA is not obligated to accept Work for Others projects.

   Since BEA had already entered into a contract with the customer for this scope of work, the customer was not pleased with the decision to divest. The current funding, pending future work, and continuation of other contracts with this customer significantly decreased.

10. Mr. Siciliano felt he was misled by N&HS management when he accepted a Department Manager position at a lower grade level than he was initially told. Additionally, his [redacted] and [redacted] told him all department managers were the same grade level; this proved to be a false statement.

    The 10 CFR 708 complaint was dismissed relative to this issue because it was determined it did not fall within the definition of a protected disclosure. Additionally, Mr. Siciliano had adequate notice of the position grade when he interviewed and accepted the position. Mr. Siciliano was similarly situated to the other managers with his level of responsibility. Further, Mr. Siciliano experienced no employment impact as he was eligible and

received a subsequent promotion. Cumulative, Mr. Siciliano has no legally actionable complaint.

In October 2007, Mr. Siciliano's [redacted] drafted an initial Position Description to be used to post the Special Materials & Processes Manager position. Mr. Siciliano had been acting in this position for several months and was shown the PD prior to sending to Human Resources (HR) for posting. The draft PD stated the position would be multi-level posting as a Manager 3- 4. Other information in the PD stated the title would be a Manager 4. Following HR Compensation review, the job was posted as a Manager 3. [redacted] admittedly recognized and regretted the confusion caused by presenting a draft of the PD to Mr. Siciliano prior to Compensation review.

Mr. Siciliano interviewed and accepted the position as a Manager 3 in August 2008 with a monetary promotion. Due to Mark's dismay in the classification of the position, a meeting was held between Mr. Siciliano, [redacted] and [redacted] in which the position was discussed along with potential for future promotional opportunities and reward structures. In this meeting, [redacted] was quoted as saying that all other Department Managers were a Manager 3 grade level with the exception of the department managers that were also performing in the Deputy role. During our investigation, [redacted] stated that he did not recall the meeting or the remark. He further stated he is very cautious making claims related to HR issues that may not be under his control. Mr. Siciliano later found out that there were other department managers at a Manager 4 grade level and subsequently filed an equity complaint.

To resolve the equity complaint, Compensation reviewed the position. Results showed that Mr. Siciliano's position was correctly classified at the Manager 3 level and classified consistently with the seven other Manager 3 positions in the D000 directorate. Mr. Siciliano still disagrees with the outcome of the equity complaint, but was promoted to a Relationship Manager 4 in December 2009 as part of the N&HS reorganization. Our investigative findings are consistent with the results found in the review performed by BEA Employee Concerns in March 2010.

11. During the N&HS reorganization in November 2009, Mr. Siciliano was moved from a department manager to a relationship manager. Mr. Siciliano alleges this was retaliation since the reassignment was made following a personal leave of absence for a disability and after he raised several issues to management attention.

    Our investigative findings are consistent with the results found in the review performed by BEA Employee Concerns in March 2010.

    The N&HS reorganization was patterned after the Battelle business model of separating strategy from operations. The reorganization had four main objectives, including separating strategic planning from operations, reducing duplication, consolidating similar fields of discipline, and placing people where their strengths could best benefit BEA. This reorganization resulted in a reduction in the number of line managers from eleven to seven; therefore, four of the previous department managers would need to be

moved to other positions. The structure was built prior to assigning names to each position.

[redacted] and directors decided that Mr. Siciliano would be named as a relationship manager. They felt another internal BEA candidate had more experience and would be better suited in the department manager role, and Mr. Siciliano's background and contacts were better aligned with the Relationship Manager position. All manager's strengths and weaknesses were considered and discussed in making these assignments. Mr. Siciliano's past behavior (i.e., overly succinct communications approach, utilization of private vs. public forums for raising management issues) was discussed by the senior N&HS management and [redacted] during the course of decision-making. Although Mr. Siciliano stated that his preference was to remain a department manager, he was assigned as a relationship manager. Mr. Siciliano was not demoted in this change; therefore, he was not retaliated against as this assignment did not negatively affect his compensation or grade level. It is the prerogative of senior management to assess strengths and weaknesses of candidates and realign organizations to capture that need.

Mr. Siciliano took a leave of absence for a disability from May 4, 2009 to June 2, 2009. Reasons for his leave were only known by [redacted] and Human Resources. This was not a factor discussed by the other directors and [redacted] in their decisions regarding the reorganization. According to [redacted] he has no knowledge of Mr. Siciliano's disability.

12. Mr. Siciliano filed an employee concern with DOE-ID in February 2010. A response was received from DOE-ID with investigation results, substantiating a preponderance of his concerns. BEA was provided with copies of the report but did not act on or follow up with Mr. Siciliano on the substantiated and partially substantiated claims.

    In May 2010, Mr. Siciliano received a response to his complaint from the DOE-ID Employee Concerns manager. According to DOE-ID Employee Concerns the report was also forwarded to BEA Employee Concerns; however, once a 10 CFR 708 claim is filed, it is incumbent upon the contractor to not interfere with the investigation, and to respond to DOE's reviews. It is this process that prevented BEA from communicating with Mr. Siciliano during DOE's investigation. The DOE-ID Employee Concerns response has been superseded by the investigation and determination by the DOE headquarters Office of Hearing Examiner. DOE Office of Hearing Examiner dismissed the allegations.

13. N&HS management has been disengaged from the strategy group and has not provided clear guidance since approximately February 2010. Additionally, Mr. Siciliano has been personally excluded from meetings/visits that he should have participated in given his assigned roles and responsibilities as a relationship manager.

    Disengagement from the strategy group is wholly under management discretion, and is not legally actionable. The disengagement affects the group as a whole and is not an adverse employment action against Mr. Siciliano.

Regarding dignitary visits, [redacted] stated that the dignitary visits Mr. Siciliano refers to were open meetings, but only presenters were specifically invited.

Of note, the 10 CFR 708 decision report concludes, "Battelle's failure to invite Mr. Siciliano to the event in question is a 'trivial' matter that does not rise to an act of retaliation under Part 708."

14. High caliber personnel have left N&HS due to disagreements with [redacted]

    This is not a legally actionable concern. It is a business issue to be addressed by management.

15. Mr. Siciliano provided numerous examples where [redacted] has displayed dishonest behavior. This is specifically a concern since 10 CFR 710 states that a "pattern of dishonesty" is grounds for revocation of a security clearance.

    The investigation was not able to substantiate Mr. Siciliano's allegations.

    Many of the conversations that Mr. Siciliano cites occurred several years ago. [redacted] and Mr. Siciliano have had little to no contact with each other for well over a year.

    One specific occurrence mentioned by Mr. Siciliano was [redacted]'s representation of the position level, which is addressed elsewhere in this report.

    In reference to another allegation, [redacted] denies having ever known that Mr. Siciliano turned him into security for not reporting his foreign travel to the appropriate person. It should be note, this information was specifically outlined in the 10 CFR 708 complaint and therefore its assumed [redacted] would be cognizant of it at that time.

    Mr. Siciliano indicated [redacted] lied to him about having knowledge of an email exchange with Dee Brown, a DOE-ID employee. [redacted] said he was mistaken when he spoke with Mr. Siciliano that indeed he was aware of the email exchange but he had confused it with a message from [redacted] also a DOE-ID individual. In this instance, [redacted] acknowledged that Mr. Siciliano was correct.

    The last allegation of dishonesty related to [redacted] misleading DOE-ID personnel on the official status of an Office of Secretary of Defense (OSD) client. This concern was thoroughly examined in the DOE-ID Employee Concerns Report in March 2010 wherein they found Mr. Siciliano's claim to be unsubstantiated.

16. There is an unwillingness to report security concerns or make a mistake due to fear of N&HS management response. This has had a negative impact on client relationships as well as N&HS employees.

The investigation did determine that the "knee-jerk reactions to issues" by management was resulting in many new security requirements and creating a fear of making a mistake within parts of the organization. Generally, there was a sense that security issues were not being covered up. This is a business issue best addressed through the management system.