Order Code RL31883

Counterintelligence Reform at the Department of Energy: Policy Issues and Organizational Alternatives

Updated July 21, 2003

Alfred Cumming
Specialist in Intelligence and National Security
Foreign Affairs, Defense, and Trade Division

Counterintelligence Reform at the Department of Energy: Policy Issues and Organizational Alternatives

Summary

Troubled by reported lapses in security and counterintelligence (CI) at the Department of Energy (DOE), the Congress in 1999 established a semi-autonomous agency — the National Nuclear Security Administration (NNSA) — to oversee DOE's national security-related programs (P.L. 106-65). Within NNSA, Congress created the Office of Defense Nuclear Counterintelligence to *implement* CI policy at NNSA facilities. DOE retained a separate Office of Counterintelligence, which *develops* CI policy for DOE and NNSA; but, *implements* it only at non-NNSA facilities. Though representing separate organizations, the two CI offices share resources, funds, and personnel for some programs. Although DOE has taken steps to strengthen security and CI practices, some observers have questioned the effectiveness of this partially bifurcated CI structure. This comes at a time when observers believe DOE and NNSA facilities have been and will continue to be a major target of foreign intelligence services, friendly, as well as hostile.

A number of possible organizational approaches have been proposed. Suggested courses of action include the following.

The first approach is to maintain the status quo. Proponents suggest that the current structure is necessary if CI is to receive the attention it warrants. Opponents counter that dual offices lead to inefficiencies that could call into question CI effectiveness.

Under a second approach, DOE and NNSA CI programs could be completely separated. Proponents suggest that this approach would establish clearer lines of authority. Opponents counter that this arrangement would produce chaos at the field level and lead to coordination and communication problems.

A third approach would be to give NNSA authority to implement all CI programming, while preserving for DOE all CI policymaking responsibility. Proponents suggest that doing so would result in an integrated and coordinated CI operational activity. Opponents counter that this approach still would leave in place two separate CI offices and lead to continuing confusion in roles and mission.

Finally, Congress could collapse the two CI programs into one, consolidating all CI policymaking and implementation within DOE. Proponents argue this would improve accountability, administration, communication, and coordination, all essential qualities, they suggest, of an effective CI program. Opponents counter that such an approach would be inconsistent with congressional intent to maximize NNSA autonomy in all areas, including CI, in the face of DOE's deeply rooted anti-security culture.

DOE Secretary Spencer Abraham recently proposed, and is seeking congressional approval for, the fourth approach, recommending that the two CI programs be collapsed into one, thereby consolidating all CI policymaking and implementation within DOE.

Contents

Counterintelligence Reform at the Department of Energy: Policy Issues and Options

Introduction

Lapses in the Department of Energy's (DOE) security and counterintelligence program have plagued DOE since 1977, when the Department was established through the merger of 40 government organizations, including the Energy Research and Development Administration and the Federal Energy Administration.[1] Some policymakers expected the new agency to focus the government's energy-related enterprises almost solely on the energy crisis. Others saw DOE as an unsuccessful attempt to fuse vastly diverse organizations, many with significantly different, if not conflicting missions.

One legacy of its origin is that DOE has struggled to balance open scientific inquiry with the security under which some of those scientific inquiries must be conducted. This inherent tension has led many observers to question whether DOE's highly classified weapons-related program has received sufficient attention, particularly with regard to counterintelligence (CI). Due to numerous problems with the CI program, the Clinton Administration issued Presidential Decision Directive 61 (PDD-61), which fundamentally restructured DOE's CI program. Among other changes, PDD-61 mandated that the Federal Bureau of Investigation (FBI) assume leadership of DOE's CI program, an initiative which continues to this day. In 1999, Congress took a further step and established the semi-autonomous National Nuclear Security Administration (NNSA) to manage DOE's national security-related programs, including DOE's sensitive weapons laboratories. Particularly concerned about CI, Congress provided NNSA with its own CI office, but maintained a separate CI office in DOE. Though representing separate organizations, the two CI offices share resources, funds, and personnel for some programs.

DOE and NNSA facilities have been and will continue to be a major target of foreign intelligence services, friendly, as well as hostile, according to the President's Foreign Intelligence Advisory Board (PFIAB).[2] Although Energy Department officials are taking steps to confront this challenge, the current DOE and NNSA

---

[1] See President's Foreign Intelligence Advisory Board,, Foreword, *Science At Its Best/Security At Its Worst*, June 1999, pp. I-II.

[2] Ibid. p. 1-2.

bifurcated CI structure continues to raise questions about the effectiveness of such an approach to address such threats to the U.S. national security.[3]

DOE CI Management Prior to the 1999 Reorganization

In 1998, President Clinton was so troubled by intelligence evidence that the PRC had successfully stolen secrets from DOE's weapons laboratories that he issued Presidential Decision Directive (PDD) 61.[4] In an effort to improve quality and accountability, the Directive established for the first time in DOE's history an independent CI office under the direction of a senior FBI executive. Previously, the Department's CI effort had been highly decentralized and widely dispersed throughout various program offices, and was, according to some observers, grossly underfunded.[5]

PDD-61 stipulated that a senior FBI official (the FBI is the primary U.S. government agency responsible for domestic CI) be named director of the office and report directly to the Energy Secretary. The PDD also directed that existing DOE contracts with the labs were to be amended to include CI goals and objectives, as well as CI performance measures to evaluate compliance. Counterintelligence oversight functions previously assigned to DOE operations and field offices were to consolidated under the Director's control. Under a follow-on implementation plan, issued in 1999, the Director gained authority over programming and funding as well as personnel authority over counterintelligence activities at all DOE field offices and laboratories. By 1999, however, a majority in Congress decided that Secretary Richardson's PDD-61 inspired reforms were insufficient.

---

[3] See Commission on Science and Security, *Science and Security in the 21st Century, A Report to the Secretary of Energy on the Department of Energy Laboratories*, April 2002. p. XII and p. 26. See also National Counterintelligence Executive, *An Assessment of the Effectiveness of the Division of the CI Programs at the Department of Energy and the National Nuclear Security Administration*, pp. 12-13.

[4] For a comprehensive review of this issue, see CRS Report RL30143, *China: Suspected Acquisition of U.S. Nuclear Weapon Secrets*, by Shirley Kan.

[5] See President's Foreign Intelligence Advisory Board, Foreword, *Science At Its Best/Security At Its Worst*, June 1999, p. 15.

The Turning Point

March 1999 marked a turning point in DOE's CI program when Energy Secretary Bill Richardson fired Los Alamos National Security Laboratory scientist Wen Ho Lee because Lee allegedly had failed a polygraph.[6] (Other allegations included that Lee failed to notify officials about certain contacts with people in the People's Republic of China (PRC), to properly safeguard classified material and to cooperate on security matters. Lee pled guilty to one felony count of unlawful retention of national defense information; the government dropped 58 additional counts.[7]) In May, a bipartisan House Select Committee released a declassified version of its report charging the PRC with having stolen nuclear weapons secrets from the United States. Finally, in June, the President's Foreign Intelligence Advisory Board (PFIAB), for the first time in its more than 38-year history of providing the President counsel on intelligence matters, publicly released one of its reports. It criticized DOE for the "worst" security record on secrecy that Panel members said they had encountered.[8] Although dismissing assertions of wholesale losses of nuclear weapons technology through espionage, the PFIAB panel did concur, on balance, with the Intelligence Community's assessment that the PRC had obtained by espionage classified U.S. nuclear weapons information that probably accelerated its program to develop future nuclear weapons.[9] In response, Congress and the President approved legislation establishing NNSA[10] to manage the department's national security-related nuclear programs.[11]

---

[6] The most recent alleged espionage case with a DOE connection involves alleged PRC spy Katrina M. Leung, who the FBI said was a 20-year Bureau informant they now suspect was a "double agent" who provided classified material to the PRC. Leung allegedly had affairs with two former FBI agents, including William Cleveland Jr., who, until he resigned his post on April 10, 2003, was Director of Security, at DOE's Lawrence Livermore National Laboratory. FBI officials reportedly have said that every PRC counterintelligence case investigated by the Bureau since 1991 may have been compromised by Leung, including that involving Wen Ho Lee. See Schmidt, Susan and Dan Eggen "FBI Assesses Potential Damage From Spy Scandal," Washington Post, April 13, 2003, p. A04.

[7] See CRS Report RL30143, *China: Suspected Acquisition of U.S. Nuclear Weapon Secrets*, by Shirley Kan, pp. 22-37.

[8] See President's Foreign Intelligence Advisory Board, Science At Its Best/Security At Its Worst, June, 1999, p. 1.

[9] Ibid. p.4.

[10] NNSA facilities include the national security laboratories (Los Alamos National Laboratory, Los Alamos, NM; Lawrence Livermore National Laboratory, Livermore, CA; and Sandia National Laboratories, Albuquerque, NM and Livermore, CA); nuclear weapons production facilities (The Pantex Plant, Amarillo, TX; Kansas City Plant, Kansas City, the Y-12 Plant, Oak Ridge, TN, the tritium operations facilities at the Savannah River Site, Aiken, S.C., and the Nevada Test Site, Nevada); and a service center at Albuquerque, NM. Naval Reactors facilities also fall within the NNSA.

[11] See S. 1059; conference report, H.Rept. 106-301; and P.L. 106-65, signed into law on October 5, 1999.

As part of the restructuring, Congress proposed creating dual CI offices in DOE and NNSA. Within DOE, the already-existing Office of Counterintelligence (OCI) was codified and made responsible for *developing* CI policy for both DOE and NNSA; but, was only authorized to *implement* that policy at non-NNSA facilities. Within NNSA, the Office of Defense Nuclear Counterintelligence (NNSA/ODNCI) was created to *implement* CI policy, but only at NNSA facilities. Conferees stipulated in the statute that a presidentially appointed, Senate confirmed Under Secretary for Nuclear Security was designated to serve as NNSA Administrator. The NNSA Administrator would report to the Energy Secretary.

In urging reorganization, conferees cited the report by the President's Foreign Intelligence Advisory Board (PFIAB) that blamed poor organization and a failure of accountability for DOE's CI failures. The report also criticized DOE for being a dysfunctional bureaucracy incapable of reforming itself.[12]

One result of this dual office is a partially bifurcated CI structure (the two offices share resources, funds, and personnel for some programs[13]) that has sparked debate over its effectiveness, particularly in light of emerging non-traditional counterintelligence threats. Specifically, critics have warned that inadequate communication and coordination between the two offices could threaten sensitive CI investigations. Supporters argue that a separate, dedicated CI office within NNSA is necessary if counterintelligence is to receive the focus it warrants.

Policy Issues For Congress

Observers have focused on two inter-related questions. First, are DOE and NNSA accomplishing their CI missions? Second, is the current partially bifurcated CI management structure within DOE and NNSA the most effective approach to CI management?

Are DOE and NNSA Accomplishing CI Missions?

One study has questioned DOE's managerial approach to CI effectiveness. The Commission on Science and Security, established by then-Secretary Bill Richardson, concluded in a 2002 report, that because of DOE's continuing management dysfunction, security, including CI, lacks clarity, consistency, and broad strategic planning. Specifically, the Commission said DOE lacked a systemwide approach for assessing risks to its assets and for determining priorities for the protection of those assets; adequate investments in tools and technologies for its counterintelligence programs; and sufficient priority for cybersecurity.[14] With respect to CI, the

---

[12] See FY2000 conference report, H.Rept. 106-301, p. 927.

[13] Those CI programs include analysis, cyber-counterintelligence, evaluations, inspections, investigations, polygraph, and training.

[14] See Commission on Science and Security, *Science and Security in the 21st Century, A Report to the Secretary of Energy on the Department of Energy Laboratories*, April 2002.
(continued...)

Commission said the dual office structure led to fragmentation and prevented the establishment of a single, strong, CI program.[15]

Another study, however, points out that DOE and NNSA have made some progress in their CI programs, although the current dual office structure exposes DOE and NNSA to the possibility of future CI missteps. In January 2003, in a requested unclassified report to the Senate Select Committee on Intelligence, the Office of the National Counterintelligence Executive (NCIX), an Intelligence Community entity charged with monitoring CI policy across the Intelligence Community, concluded that DOE and NNSA were making progress in accomplishing much of their basic CI mission, particularly in the areas of strategic planning, operating procedures and implementation of information systems, but criticized the bifurcated CI structure.[16]

NCIX blamed the current dual-office format for numerous day-to-day problems, including duplicative and, at times, contradictory messages to field sites; mis-routing of sensitive CI information related to investigations; uncoordinated communications to the FBI and the Intelligence Community; and dual, sometimes, inconsistent, tasking of program managers.[17]

Although manageable under the current structure, NCIX suggested that these problems posed the potential for more fundamental missteps in the future. According to one law enforcement officer cited by NCIX, the two-office configuration "might some day lead the department to miss a serious CI breach or prevent the conduct of an effective investigation."[18]

Is The Bifurcated Structure Most Effective?

With regard to a bifurcated structure, two general views prevail. According to one view, espoused by the PFIAB and others, real and lasting CI reform is "unworkable within DOE's current structure and culture. To achieve the kind of protection that these sensitive labs (DOE's national security laboratories) must have, they and their functions must have their own autonomous operations structure free of all the other obligations imposed by DOE management."[19] The PFIAB, in 1999

---

[14] (...continued)
p. XII-XIII.

[15] Ibid. p. 26.

[16] See National Counterintelligence Executive, *An Assessment of the Effectiveness of the Division of the CI Programs at the Department of Energy and the National Nuclear Security Administration*, p. 9.

[17] Ibid. p. 10.

[18] Ibid. p. 13.

[19] See President's Foreign Intelligence Advisory Board,, Foreword, *Science At Its Best/Security At Its Worst*, June 1999, p.46.

recommended the establishment of a semi-autonomous agency within DOE, with its own coherent CI structure.[20]

The contrary view holds that CI must be a unified, integrated DOE-wide function. The Commission on Science and Security concluded:

> Counterintelligence must be an enterprise-wide function, responsible for counterintelligence issues anywhere within the DOE complex. Furthermore, counterintelligence investigations, analysis, and all other counterintelligence information must be developed within a unified organization and provided to the Secretary and other senior officials without bureaucratic delays. This vital function necessitates one organization with one chief of counterintelligence reporting to the office of the Secretary.[21]

NCIX, in its report, concluded, "'this partial bifurcation' of CI responsibilities at DOE not only served to further complicate the formidable challenge of managing CI at DOE, but also endangered the goals and implementation of an effective CI program."[22] NCIX further noted that, "In light of the history of CI investigations that foundered because of mis-communications within well-established agencies, the two-office arrangement has raised the odds of missteps and problems."[23] NCIX recommended that the two offices be consolidated under one senior CI officer with DOE-wide responsibility for all aspects of the program and that would report directly to the Secretary of Energy.[24]

---

[20] Ibid. p. 47.

[21] See Commission on Science and Security, *Science and Security in the 21st Century, A Report to the Secretary of Energy on the Department of Energy Laboratories*, April 2002. p. 26.

[22] See National Counterintelligence Executive, *An Assessment of the Effectiveness of the Division of the CI Programs at the Department of Energy and the National Nuclear Security Administration*, 2003. p. 1.

[23] Ibid. p. 2

[24] Ibid. p. 3

Possible Organizational Alternatives

Congress, of course, could choose to maintain the current organizational structure. If Congress ultimately decides to modify the structure, a number of organizational alternatives have been proposed. The range of alternatives currently being discussed include the following: (1) maintain the status quo; (2) completely separate DOE and NNSA; (3) consolidate DOE under NNSA; and (4) consolidate counterintelligence within DOE.

Alternative One: Maintain the Status Quo

DOE's Office of Counterintelligence would continue to be responsible for *developing* CI policy across DOE (including the NNSA) but *implementing* that policy only at non-NNSA facilities. (NNSA/ODNCI) would continue to *implement* CI policy at NNSA facilities.

Proponents of the status quo point to congressional concern in 1999 that DOE was failing to focus necessary and appropriate attention on CI. The semi-autonomous NNSA and its Office of Nuclear Counterintelligence, they argue, was established for the express purpose of having one entity outside of DOE focus on, and be held accountable for, implementing CI policy at DOE's sensitive nuclear and national security programs, including its weapons labs. The current structure, it is suggested, accomplishes that goal while maintaining a reasonably close integration of program activities. Opponents counter that the current structure produces "inefficiency, confusion, unnecessary contention, and mis-communication."[25] They also suggest that in some areas, the NNSA structure within DOE has exacerbated the general problem of too many layers in DOE, particularly with respect to counterintelligence.[26]

Alternative Two: Completely Separate DOE and NNSA

This option is a complete separation of DOE and NNSA counterintelligence programs, with OCI providing CI support to DOE, and NNSA/ODNCI providing CI support to NNSA. Proponents suggest that this approach would establish clearer lines of authority for CI within DOE and NNSA, which would improve communication and coordination. Opponents counter that such an arrangement would produce chaos at the field level and could lead to future problems of redundancy, coordination, communications, and relations with law enforcement.[27]

---

[25] Ibid. p. 1.

[26] See Commission on Science and Security, *Science and Security in the 21st Century, A Report to the Secretary of Energy on the Department of Energy Laboratories*, April 2002. p. 26.

[27] See National Counterintelligence Executive, *An Assessment of the Effectiveness of the Division of the CI Programs at the Department of Energy and the National Nuclear Security Administration*, 2003, p. 15-16.

Alternative Three: Consolidate DOE Under NNSA

The third option consolidates all DOE CI implementation under NNSA, leaving DOE's Office of Counterintelligence in charge of formulating all CI policy. Proponents suggest that this approach would support an integrated and coordinated CI operational activity and result in a more effective allocation of resources by permitting NNSA to focus its resources on CI implementation and DOE to target its efforts on policy formulation. They also argue that NNSA oversees the most sensitive classified activities within DOE and therefore is best suited to implement all CI activities across DOE. Opponents counter that this approach would leave in place two CI offices, one with policymaking responsibilities and one with operational responsibilities, thereby contributing to continuing confusion as to roles and mission.

Alternative Four: Consolidate CI Within DOE

The final option consolidates all CI policymaking and implementation within DOE. Proponents suggest that consolidation will improve accountability, with a single individual answering to the Secretary of Energy as well as reporting to the directors of the FBI and the CIA and the congressional oversight committees. Supporters cite two additional benefits: streamlining administration, communication and coordination and improving the consistency of implementation once decisions are made.[28]

Such an approach, according to proponents, would highlight CI as a department-wide mission that includes protecting leading-edge technologies, critical infrastructure, and national nuclear weapons secrets, as well as protecting DOE facilities against international terrorist attacks. They point out that much national security-related work is undertaken that is not nuclear weapons focused and is not conducted at NNSA sites.[29]

Opponents, however, argue that such an approach is inconsistent with the intent of Congress to maximize NNSA autonomy in all areas. That intent, they assert, is based upon a historic appreciation for the management challenge DOE's national security program presents. Opponents cite the longstanding tension between science and security and the deeply rooted anti-security culture found DOE weapons labs. In their view, only a semi-autonomous agency such as NNSA can create a cultural environment that values security as a vital and integral part of day-to-day activities and believes it can coexist with great science.[30]

---

[28] Ibid. p. 18.

[29] Ibid. p. 17.

[30] See President's Foreign Intelligence Advisory Board, *Science At Its Best/ Security At Its Worst*, p. III.