

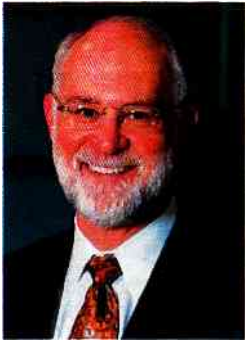
Is This The Time To Be Closing BP's Ombuds Office?

Could the timing be any worse? In a year in which BP claimed top-line ranking among the world's most pilloried corporate entities, the company mulled plans to close its ombuds office.

The giant UK-based oil company established its Office of the Ombudsman after a fatal explosion in 2005 at BP's Texas City refinery that claimed 15 lives. The Washington, DC-based office was run by former federal judge Stanley Sporkin. It continued to take calls during the company's disastrous April 2010 oil spill in the Gulf of Mexico.

In October 2010, however, the company told the UK's *Guardian* that that it "would not extend the office's tenure beyond June next year."¹

This followed a similar report in June by CNN that "BP has been trying to shut down an internal safety watchdog agency it set up under congressional pressure four years ago, according to sources close to the office and a leading congressman."²



Charles Howard

[When *Ethikos* sought comment from BP America in mid-November, we were referred to a company statement that said, "We have not made a decision about extending" the ombudsman's contract. When asked *when* a decision might be forthcoming, or whether published press reports were inaccurate, the company did not respond.]

Designed to be temporary

BP has long contended that its ombuds office was only designed to be temporary. "It has always been our intent to internalize the employee concerns process, but only at the point in time where we felt the internal processes were sufficiently robust. Until that time the intent has been to keep the Ombudsman employee concerns avenue for employees in place," it said in a statement.

But reports that the ombuds office would be shut down—coming so soon after the explosion aboard the drilling rig Deepwater Horizon, which resulted in the largest accidental oil spill in history—generated some bafflement.

"What is fully evident, from BP's pipeline spill in Alaska and the Texas City refinery disaster, to the Deepwater Horizon well failure, is that BP has a long and sordid history of cutting costs and pushing the limits in search of higher profits," said U.S. Rep. Edward Markey.

"When the culture of a company favors risk-taking and cutting corners above other

¹ Webb, Tim, "BP plans to close its US safety watchdog," *The Guardian*, October 10, 2010. See <http://www.guardian.co.uk/business/2010/oct/10/bp-us-safety-ombudsman-closure>

² Griffin, Drew, and Fitzpatrick, David, "BP plans to get rid of safety watchdog, sources say," CNN Report, June 30, 2010.

Is OpenTalk, BP's employee helpline, a valid replacement for its outside ombuds office?

concerns, systemic failures like this oil spill disaster result without direct decisions being made or trade-offs being considered,” said Markey.

What could BP possibly be thinking?

Charles Howard, author of the *Organizational Ombudsman* and an authority on corporate ombuds offices, suggested that in a culture where there seems to be a fear of coming forward—which may be the case with BP—it doesn’t make much sense to eliminate the office. One wants to create *more places* where people can report things, not fewer.

That said, BP never had the ombuds office that it should have had, Howard told us. It was external, run by a former judge, and seemed more geared to conducting investigations than to providing employee counsel or coaching or some of the other functions of the “organizational ombudsman” that Howard writes about. (See the March/April 2010 issue of *Ethikos* for more on this.) It was structured more like an external, alternate compliance function, he suggests.

A knee-jerk reaction?

In September 2006, BP America President and Chairman Bob Malone named Judge Stanley Sporkin as BP Ombudsman “to serve as a neutral and supportive adviser that employees can turn to to report a breach of the company’s safety or ethics policies.”¹

That same month, the former judge resigned from Weil, Gotshal and Manges, where he was a partner, and opened BP’s ombuds office in Washington, DC, with eight staff members.

Some viewed this as a knee-jerk reaction, typical of companies in crisis (in this case a result of the Texas City explosion) that may be facing an investigation or even a conviction. They set up an outside office, but it is often viewed by employees as more of a “tips line”; the people running it are often seen as something akin to law enforcement agents.

Four years later, in October 2010, a BP spokesman told the UK’s *Guardian* that the ombudsman’s role was never meant to be permanent. The company currently has a program called OpenTalk—an employee helpline managed by a third party—that encourages employees to report concerns and allows them to stay anonymous if requested.

It has always been BP’s intent to internalize the employee concerns process into the OpenTalk program, the company says. BP’s latest annual report, for 2009, showed that the number of calls to OpenTalk fell by 5 percent from

BP’s latest annual report, for 2009, showed that the number of calls to OpenTalk fell 5 percent from the previous year, noted the Guardian.

the previous year, noted the *Guardian*, which added that BP was seeking “further improvement” in the program.

Meanwhile, “concerns received by the ombudsman’s office increased almost fourfold between its inception and last year. Last year alone, the figure was up by two-thirds over 2008. Of the 252 known concerns received in total since 2006, 148 relate to BP’s Alaska operations. These include 50 specific safety-related concerns at the North Slope operations,” continued the *Guardian*.

A valid alternative?

Still, if BP is moving ombuds traffic over to OpenTalk, its helpline, is this necessarily wrong? Isn’t OpenTalk debatably a valid replacement for the outside ombuds office?

It could be, says Donna Boehme, Principal, Compliance Strategists, LLC (New Providence, NJ) and former Group Compliance and Ethics Officer for BP and the founder of its function and program in 2003. But it has to be done right.

“For any company, the helpline is only one element of an effective program,” Boehme told us, “and most boards, CEOs and even regulators only focus on 5% of what makes one work: establishing it and turning it on. The other 95% is all in the follow up: How you explain and market it to your employees, intake of complaints, appropriate and necessary skilled resources, and consistently implemented guidelines for investigation and enforcement. But above all, what is the actual and visible commitment of management to supporting all of this? If the follow-up is flawed, your helpline is not only ineffective, it may undermine your overall program.”

Does BP have the commitment and wherewithal to



Donna Boehme

¹ Conte, Alison, “BP America names Sporkin as first ombudsman,” *Horizon*, November 2006.

Continued on page 16

(May 5, 2003): 23,731, 23,741.)

281 Third-party exit interviews. To protect anonymity and to encourage candor, use a third party to conduct exit interviews. (See Sherwood, "The Exit Interview: A Final Compliance Check," *ethikos* 18 no. 6 (May/June 2005): 13, 14.)

282 Walk-arounds. Do site "walk arounds" to check for things like required compliance posters (e.g., EEO, safety, etc.), objectionable pictures, safety hazards, etc. (See Kaplan, "Compliance Programs for Smaller Companies," *ethikos* 21 no. 4 (Jan./Feb. 2008): 6, 8; *U.S. Sentencing Guidelines*, Section 8B2.1, Commentary Note 2(C)(iii).)

283 Employee surveys. Use employee surveys to gauge employee awareness of the compliance and ethics

program and their views of its effectiveness. (See "Sara Lee Corporation Relies on its Business Practices Officers Overseas," *ethikos* 11 no. 3 (Nov./Dec. 1997): 4; Singer, "How Xerox Weaves Ethics Into the Internal Audit Process," *ethikos* 20 no. 5 (Mar./Apr. 2007): 11, 12.)

284 Survey piggybacking. If you cannot get a separate survey on compliance and ethics, piggyback a few compliance and ethics questions on an existing employee survey. (See Petry, "Assessing Corporate Culture: Part II," *ethikos* 19 no. (July/Aug. 2005): 10.)

(*501 Ideas from 30 Years of Practice* is available from the Society of Corporate Compliance & Ethics [www.corporatecompliance.org], 6500 Barrie Road, Suite 250, Minneapolis, MN 55435, telephone: 888-277-4977.) □

BP has gone through three ethics officers in a short period of time, which tends to 'dilute' the power of the position, said one observer.

BP's Ombuds Office. . . Continued from page 13

make it work, then?

Some are skeptical. Scott Schloegel, chief of staff for U.S. Rep. Bart Stupak, chairman of the House Subcommittee on Oversight and Investigations, told the *Guardian*: "Every time there is a disaster, BP sets up a new program and says they are going to change the culture within BP."

BP has gone through three ethics officers in a short period of time, one industry source told *Ethikos*, which tends to "dilute" the power of the position. The company also moved its ethics office from UK headquarters to Houston, Texas, which also sends a negative message to employees. There is often an inverse relationship between ethics office 'clout' and distance from company headquarters.

Studies have shown if a helpline is to be credible and trustworthy two things have to happen, says Boehme. First, employees have to believe that if they call with a report, something will be done; and second, if they do report wrongdoing, they won't suffer retaliation. If those condi-

tions are met, then BP could indeed do without its outside ombuds office, in Boehme's view.

Indeed, multiple reporting lines (e.g., an ombuds office and a helpline) risk confusing employees. "Most companies with a first-rate ethics and compliance program do it with a single, well-implemented and supervised line," she notes.

Howard, a law partner with Shipman & Goodwin (Hartford, CT) disagrees. OpenTalk "is not bad," he observes, just like hotlines aren't bad—they're good—but "it's not enough." Employees still need that designated neutral, marked by independence, informality, and confidentiality.

According to Boehme, top management support is what is really critical:

"If the program isn't led by an empowered, senior-level chief compliance officer with adequate resources and direct, unfiltered reporting obligations to the Board, no ombuds office or helpline really has a chance of working as intended," she says. "That approach belongs in the 'paper program' category."

"If you don't have a committed and supportive senior management and incentives to drive ethical leadership throughout the line," Boehme adds, "there are serious limits to what the helpline can do. It would be tantamount to parachuting in with a helpline into a pre-settlement Siemens and expecting it to solve the world's problems."

— Andrew Singer