

The Significance of the Chilling Effect

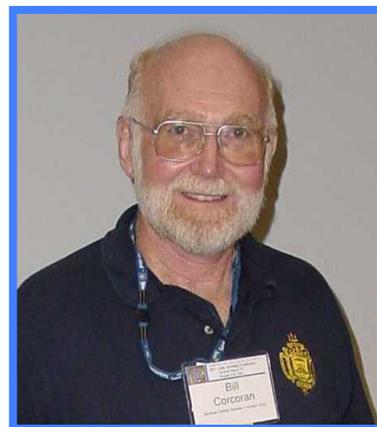
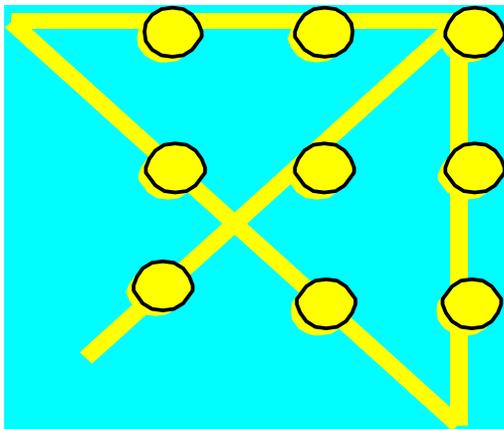
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The Significance of the Chilling Effect

(A reflective inquiry in progress)

by Bill Corcoran

What is a "chilling effect?"

A chilling effect is one or more conditions, behaviors, actions, and/or inactions that result in anomalies, deviations, nonconformities, wrongdoing, and the like not being promptly identified and addressed.

The term "chilling effect" has long been used to characterize government measures to suppress freedom of speech. It has also been used to characterize government and non-government measures to discourage voting, to discourage seeking redress of injustice, and the like.

Recently it has been used in high hazard industries to characterize the obstruction, discouragement, impeding, and even punishment of safety concern and quality concern reporting.

Chilling effect is involved in a Trip to Abilene, GroupThink, Cognitive Dissonance Reduction, Regulatory Capture, Going Native, and the like.

Often workers come to a fork in the road: write up/ speak up/ speak out or not. What happens at the fork is crucial. Chilling effects at the fork include those items that would oh so gently nudge the worker toward "not." There is often a crucial moment after which speaking up becomes self-incriminating, awkward, inconvenient, or inappropriate. The golden moment can slip away forever.

A requirement of the USNRC is:

"Measures shall be established to assure that conditions adverse to quality... are promptly identified..."

Chilling effects are what interfere with simple prudent businesslike compliance, i.e., prompt identification of adverse conditions.

What is "chilling effect" not?

- Chilling effect is not the root cause of anything.
- Chilling effect is not the insight that will solve the performance culture problem.

- Chilling effect is not just intentional, malicious, blatant, transparent, obvious, easily describable, or the like.

What's the chilling effect problem?

Without chilling effects "Frog Boiling", "Normalization of Deviance", "Drift into Failure", "Loss of Safety Focus", "Cyclical Dysfunctional Performance", "GroupThink", and the like would not happen.

Without a chilling effect conditions adverse to quality and/or safety would be promptly identified and corrected on the first pass. Furthermore, their underlying causal adverse conditions, behaviors, actions, and inactions would have been identified and corrected on the first pass.

Each chilling effect exists because management wants it to exist, because management tolerates its existence, or because management is unaware of its existence.

How serious has it been?

In the U.S. nuclear power industry, is there a case for SONGS 2/3, Crystal River, Millstone 1, Rancho Seco, TMI-2, ANO-1, Browns Ferry (fire), Davis-Besse 2002, Peach Bottom Inattentiveness (two instances), the Groundwater Contamination Epidemic, etc. being victims of chilling effect?

How did the chilling effect permit, prolong, and exacerbate the Affordable Care Act (ACA) Website Rollout Fiasco, the DVA Wait Time Gaming Scandal, ENRON, the Subprime Mortgage Meltdown, the Bernie Madoff Scam, GM Ignition Switches, Takata Air Bags, the U.S. Air Force Nuclear Arsenal Scandal, Deepwater Horizon Macondo, San Bruno Gas Explosion, the U.S. Secret Service White House Bungles, certain prolonged sexual abuse scandals, the Boeing Dreamliner Battery Fire Groundings, the Waste Isolation Pilot Plant (WIPP) Shutdown to name a few?

Is there a chilling effect that discourages citizens even to think about chilling effects that were involved in the Vietnam War, the Bay of Pigs, the 9/11 Attacks, Challenger, Columbia, Asbestos, Black Lung Disease, the Second Invasion of Iraq, and the recent U.S. CDC Ebola Stumbling?

What are some of the incentives for chilling effects?

- A chilling effect results in less dissent.
- A chilling effect gets more work done on this shift.
- A chilling effect results in the appearance of teamwork, alignment, and unanimity.
- A chilling effect shortens outages.
- A chilling effect accelerates start-ups and restarts.
- A chilling effect results in fewer adverse condition reports.
- A chilling effect results in fewer audit findings.
- A chilling effect results in fewer identified unreviewed safety questions (USQs)(also known as “10CFR50.59 positives”).
- A chilling effect results in fewer corrective actions from event investigations.
- A chilling effect results in fewer self-reported regulatory nonconformities.
- A chilling effect results in narrower extent, extent of condition, and extent of causation in event investigations.
- A chilling effect results in fewer employee concern allegations.
- A chilling effect results in fewer adverse answers to employee safety culture survey questions.
- A chilling effect results in keeping the lid on, perhaps past the chiller's retirement or rotation date.
- A chilling effect results in the illusion of positive control.
- A chilling effect results in enhancing the illusory theater of good safety culture.

What are some of the downsides of chilling effects?

- A chilling effect results in management not becoming aware of accidents waiting to happen until after they happen.
- A chilling effect results in representing the situation as being better than it is.
- A chilling effect results in nonconformities progressing to enormities.
- A chilling effect results in not getting the budget to fix what is unreported.

What are some stories that show how the chilling effect works?

These stories are anecdotal and may not have happened exactly as reported here. The examples raise a question: Did the perpetrators of the chills know what they were doing?

Saving Taxpayer Dollars:

At a government nuclear facility, management became concerned about potential taxpayer outrage over paying workers who were not working. Management renegotiated the labor contract to provide that if work stopped workers would be sent home without pay. Result: No more workers expressed safety concerns that would result in work stoppages. Chilling effect.

Not Clogging the Corrective Action Program (CAP):

At a large meeting the CAP Manager mentioned that resources were being wasted processing adverse condition reports (ACRs) on items that were already in the system. Since the workers could not easily tell what was or was not in the system they stopped writing ACRs when they were in doubt. Chilling Effect.

Protecting the Bonus:

Management announced a substantial bonus for all hands contingent on meeting a certain schedule. Also, there was a policy that if work package errors were found during pre-job briefs the job would be stopped until the work package was corrected. Henceforth only life-threatening work package errors were reported. Chilling Effect.

Supervisory Involvement:

The electronic Corrective Action Program (CAP) was changed so that adverse condition reports (ACRs) did not get into the system until after the ACR originator's direct supervisor approved the ACR. This resulted in adversarial meetings between originators and their supervisors who did not want to approve anything that they did not fully concur with. Originators stopped reporting ACRs that might provoke conflict. Chilling Effect

Boomerang Policy:

The Site Vice President said that ACRs could be resolved more effectively if the person who understood the ACR best was assigned to resolve it. The CAP Manager took this to mean assign the ACR to its originator. Prospective

originators soon got the message that reporting an ACR would increase the originator's workload. Chilling Effect.

Cumulative Impact:

At an industry meeting executives shared that they were concerned about "the cumulative impact" of corrective actions. When the message got to the plants fewer ACRs were initiated, investigations were done faster, fewer lines of inquiry were pursued, and fewer, less costly corrective actions were recommended. Chilling Effect.

Regulatory Complicity:

Site management was concerned about the potential for a chilling effect so they asked their staffs to lower the threshold for writing ACRs. The regulator noticed the increased number of ACRs and discussed it in an exit meeting. Management explained that the increase was due to threshold lowering not to performance degradation. The regulator scornfully expressed incredulity and skepticism. When the plant staff found out they unofficially restored the high threshold. Chilling Effect.

Backlash:

A security officer at a nuclear station reported the inattentiveness of his fellow security officers to the NRC. Eventually it resulted in the security contractor firm being terminated. This resulted in the originating security officer being laid off. Chilling Effect.

Chill by Definition:

A plant was having an adverse trend in rework. Management changed the definition of rework to exclude all rework before post-maintenance testing. This resulted in fewer reports of rework. Chilling Effect.

What are the factors that chill?

When anyone at any level is aware of an adverse condition and does not report it promptly they have been subjected to some sort of chilling effect.

Certain thought patterns repeatedly and reliably influence the non-reporting of existing sufficiently transparent adverse conditions? These are some of the exit signs from the path of quality, safety, and compliance.

I'm new here. I don't want to step out of line by bringing up things that other people would bring up if they were problems.

My boss is a good person. If he thought it was a problem, he would report it, so I don't need to report it.

If I report this it will stop the job, which will delay the outage, which will jeopardize the bonus, which will alienate me from my friends, and that's not worth it.

The situation has been like this for a long time without hurting anyone and without anyone reporting it.

It doesn't look right to me, I can't be sure it's wrong, and people who misreport are ridiculed.

The other people on this team see what I see. If they thought it was a problem someone would have said something.

It looks to me like the team players suck it up. Why should I speak up?

Every adverse condition exists because of the performance of some person, persons, or group. When I report the adverse condition I accuse them.

When you point one finger at someone else there are three pointed back at yourself.

Judge not that you be not judged.

Is the chilling effect built in to the culture?

A chilling effect appears to have been built into the system. In order to minimize its impact it must be fought vigorously. Here's what one sees.

Our culture is a culture of "can do attitude", of "Just do it", of not squealing, of sucking it up, of not airing dirty laundry, of not ratting on friends, of not creating work for the team, of "What happens on the rig stays on the rig", etc.

Our culture is a culture of loyalty to our bosses and to their organizations. Sometimes this can involve being blindly and/or kindly tolerant of their flaws.

Our culture is one of "Don't give me your problem unless you've figured out the solution."

Our culture is a culture of "Someone above my pay grade knows what make this issue acceptable."

Our culture is a culture of not rocking the boat.

Our culture is a culture of "Don't make a Federal case out of it."

Only as a last resort do people report problems to management or government authorities.

People who report problems create more work in the short run. Most new problems are budget busters. Some are schedule busters.

One does not get promoted by reporting problems.

If you could get the data to correlate promotions with problem reporting what would you expect to see?

Do internal audits do that correlation?

One of the harmful factors of all big problems in the high hazard industries is that the underlying harmful factors were not reported and addressed before the big problems occurred.

How come?

A correspondent said: "It is my belief that part of the problem is wrapped up in corporate compensation programs. Folks aren't compensated for how they do over three or five or ten years. They are compensated for how they do this year. As a result, there's never enough time or financial resources to fix a problem the first time, but always enough time and financial resources to fix it right the second time. Thus, employees, acting rationally, look at meeting short term goals for the company rather than the long term goals sought by investors."

Does this support a chilling effect?

What can be done?

Should chilling effect be a line of inquiry in every event investigation, every event-based audit, and every event-based inspection?

Ironically chilling effect is not on the checklist for every event investigation, every event-based audit, and every event-based inspection because of the deeper chilling effect.

Even if the chilling effect were on the checklist for every event investigation, every event-based audit, and every event-based inspection the full enormity of it would not be revealed because of the even deeper chilling effect.

Should adverse condition reporting be an affirmative duty rather than a voluntary option?

What are Some Antidotes for Chilling Effect?

Competency: Competency is achieved when measures are established that assure that authorities, duties, roles, and responsibilities are assigned to individuals, groups, and organizations that demonstrably have the knowledge, skills, and abilities to perform satisfactorily in service.

Compliance: Compliance is achieved when requirements are known and adhered to by those whose behaviors make a difference.

Transparency: Transparency is achieved when the acceptability of a condition, behavior, action, and/or inaction is readily apparent.

Integrity: Integrity is achieved when individuals, groups, and organizations do not falsify, fabricate, mislead, misrepresent, or deceive and do not tolerate those who do.

Open discussion of chilling effects

Event-based Chilling Effect Awareness Training

Event-based Compliance Training

Catch-of-the-day Programs

Adding “Chilling Effect” to all “cause maps”, “cause trees”, and other picklists.

Adding “Chilling Effect” to cause coding tables.

Making the reporting of adverse conditions a condition of employment.

Due diligence assessments on job turnovers, on handoffs, and on taking on new assignments, accountabilities, duties, and the like.

What are some chilling effect paradoxes?

Can punishing an organization for its chilling effects have a chilling effect on employees who want the organization to thrive?

Can the details of what an employee went through to circumvent and counteract the chilling effect send the message that reporting a concern will result in an extremely unpleasant episode?

What is the involvement of trust and suspicion?

Excessive trust in a boss, team, or organization can create a chilling effect in that the concerned individual may trust that the situation is properly controlled despite the existence of reportable issues.

Suspicion of the good faith of a boss, team, or organization can create a chilling effect in that the concerned individuals may be reluctant to expose themselves to possible harassment, intimidation, retribution, reprisal, or discrimination.

What are some key questions?

Is the chilling effect a constraint on safety culture effectiveness?

Is the chilling effect the sound barrier of safety?

Is the chilling effect our elephant in the room?

Is the chilling effect the gorilla in the basketball court?

Is the chilling effect a natural outcome of Cognitive Dissonance Reduction?

Is the chilling effect something we acquire in the home at an early age, reinforced by experiences at school, and at other places?

What are the most cogent studies of chilling effect in anthropology, social psychology, moral psychology, behavioral economics, etc.?

What are the existing regulatory requirements that discourage or forbid chilling effects? How come they are not more effective?

What's the challenge for you?

Can you recall the last time you chose not to call attention to a problem? What were the chilling effects that got in your way?

How many readers will print this out and show it around?

How does the chilling effect hold you back?

Acknowledgements

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Feedback and Pushback

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