HSS/Labor Union Meeting

HSS
Office of Health, Safety and Security

10 CFR 851 / Safety Standards

July 17, 2008

UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

HSS/Union Working Group Meeting
July 17, 2008 1:00 – 4:00 pm EST

[redacted]

SUBJECT: SAFETY STANDARDS / 10 CFR 851

Core Union Working Groups

Safety Standards:

Metal Trades Department AFL-CIO - *Lead*
International Brotherhood of Electrical Workers (IBEW)
Operative Plasterers' & Cement Masons' International Association (OPCMIA)

10 CFR 851:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) - *Lead*
Building &Construction Trades Department Center for Construction Research &Training (BCTD CPWR)
International Guards Union of America (IGUA)
International Union of Operating Engineers (IUOE)

Meeting Facilitation

Safety Standards: Tom Schaffer/Jim Seidl……Metal Trades Department AFL-CIO
10 CFR 851: Doug Stephens/Tom McQuiston…….USW

Draft Agenda

I. USW Lead: 10 CFR 851 Issues
   1. Worker Involvement
   2. Training
   3. DOE's role in 851 Rule enforcement
   4. Oversight and tracking of 851 issues

II. USW and Metal Trades Department Combined Lead: Issues related to, but beyond, 10 CFR 851
   1. Union participation in accident investigations
   2. Local/International union involvement in training, lessons learned and corrective actions programs
   3. Contractor utilization of union knowledge and access to this knowledge
   4. HSS outreach website and communication venues

III. Metal Trades Department Lead: Safety Standard Implementation
   1. Contractor inconsistencies among and within DOE sites
      - How does DOE drive either a holistic or disjointed approach to managing contractor to contractor
   2. Worker involvement with regard to implementation of safety directives, standards and rules/requirements and ongoing input for continuous improvement
   3. Consistent safety standard implementation and other stakeholder activities

IV. Meeting Recap
   1. Key points/actions
   2. Other topical interface developments of interest

10 CFR 851
Worker Safety and Health Program

- 10 CFR Part 851 Federal Register, February 09, 2006
  - Preamble
  - Rule
  - Technical Amendment to 10 CFR 851, November 28, 2006
  - Corrections to 10 CFR 851, June 28, 2006
- Frequently Asked Questions (FAQs)
- 851 Position Papers and Letters
- Implementation Guide (G440.1-8)
  - Occupational Medicine Section, DRAFT REVISION
- Office of Enforcement
- Worker Safety and Health Program Approval
- Contractor Worker Safety and Health Poster
- Contractor Worker Safety and Health Poster in Spanish
- 851 Rule Advisory
- Variances
- Occupational Safety and Health Administration / DOE Memoranda of Understanding
- General Counsel Interpretive Rulings
  - Applicability of 10 CFR 851 to Parsons ATC and Barnwell Activities
  - Applicability of 10 CFR 851 to Parsons non-DOE Office Areas at SRS
  - Applicability of 10 CFR 851 to Savannah River Ecology Laboratory
  - Applicability of 10 CFR 851 to Savannah River Archaeological Research Program
- Archives
- October 3, 2007 Televideoconference-10 CFR 851 Implementation Workshop-Single Provider Occupational Medicine
  - NSTec-Nevada Test Site presentation
  - AdvanceMed Hanford presentation
  - Televideo Agenda - 10/3/07

This page was last updated on November 16, 2007

You Have a Right to a Safe and Healthful Workplace

IT'S THE LAW!

- You have the right to notify your employer or the local Department of Energy (DOE) office about workplace hazards, without reprisal. You may ask that your name not be used.
- You have the right to participate in the activities referenced in 10 CFR 851 "Worker Safety and Health Program," on official time.
- You have the right to access copies of DOE worker protection publications; the worker safety and health program for your workplace; and the standards, controls, and procedures that apply to your workplace.
- You have the right to have access to your accident and illness records and copies of your medical records.
- You have the right to observe monitoring or measuring of hazardous agents, to receive the results of your own monitoring, and be notified when monitoring results indicate an overexposure.
- You have the right to have a representative accompany the DOE's Director for enforcement or the Director's authorized personnel during the inspection of your workplace.
- You have the right to request and receive results of inspections and accident investigations. The request for an inspection can be submitted anonymously in writing to HSS.
- You have the right to decline to perform an assigned task because of your reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious physical harm to you, coupled with your reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures.
- Your employer must post this notice in your workplace.

Title 10 CFR 851 requires DOE contractors to provide their workers with a safe and healthful workplace. To obtain more information about those requirements and your rights; seek advice or assistance; or report an emergency contact your supervisor, your local DOE office, or the DOE Office of Health, Safety and Security (http://www.hss.energy.gov). Additional inquiries or concerns may be addressed to the Employee Concerns Manager at the local DOE office at _____ (phone number and/or email address).

Usted Tiene El Derecho de Trabajar En Un Lugar Seguro Y Sano

¡ES LA LEY!

- Usted tiene el derecho de notificar a su empleador o a la Oficina local del Departamento de Energía (DOE) sobre peligros en el lugar de trabajo, sin temor a represalias en su contra. Usted también puede pedir que su nombre permanezca anónimo.

- Usted tiene el derecho de participar durante tiempo oficial en actividades referidas en el Reglamento *"Programa de Seguridad y Salud Para el Trabajador"* (Título 10 del Código de Reglamentos Federales Parte 851).

- Usted tiene el derecho de tener acceso a publicaciones del Departamento de Energía acerca de la protección al trabajador, copias del programa de seguridad y salud en su lugar de trabajo, estándares prescritos por el Departamento de Energía, y estándares o procedimientos para la protección del trabajador relacionados con su organización.

- Usted tiene el derecho de recibir copias de su historial o registro médico y el registro de su exposición a sustancias o condiciones tóxicas o dañinas.

- Usted tiene el derecho de observar el monitoreo o pruebas de medición de productos químicos peligrosos y de ser notificado cuando los resultados del monitoreo indican que los niveles de exposición sobrepasan los límites establecidos por las normas de seguridad.

- Usted tiene el derecho a que un representante acompañe al Director o personal autorizado en lugar suyo durante la inspección del lugar de trabajo.

- Usted tiene el derecho a pedir y recibir los resultados de inspecciones e investigaciones de accidentes.

- Usted tiene el derecho de rehusarse a realizar tareas asignadas si usted piensa de buena fe, bajo las circunstancias, que las tareas presentan un peligro inminente de muerte o daño físico, y no existe suficiente tiempo, debido a la urgencia del peligro, de corregirlo mediante vías normales de cumplimiento, tales como reportarlo y estableciendo procedimientos para eliminarlo.

- Su empleador debe colocar este aviso en su lugar de trabajo.

10 CFR 851 requiere que los contratistas del Departamento de Energía proporcionen a sus trabajadores condiciones de trabajo seguras y sanas. Para obtener más información acerca de estos requerimientos y de tus derechos; pedir ayuda o asistencia; o reportar una emergencia, comuníquese con su supervisor, con la oficina local del Departamento de Energía, o la Oficina de Seguridad Y Salud del Trabajador (http://www.hss.energy.gov). Otras preocupaciones o quejas pueden ser dirigidas al Gerente de Quejas de los Empleados (Employee Concerns Manager) en la oficina local del Departamento de Energía al _____(numero de teléfono y/o correo electrónico)

10 CFR 851
Worker Safety and Health Program

Bill McArthur, PhD, CIH

Director, Office of Worker Safety and Health Policy

Patricia Worthington, PhD

Director, Office of Worker Health and Safety

10 CFR 851 Time Line

Office of Health, Safety and Security

- **December 2, 2002 – 107th Congress Amends AEA Adding Section 234.C**
- **December 18, 2003 - Notice of Proposed Rulemaking**
- **February 27, 2004 - Notice Suspended**
- **January 26, 2005 - Supplemental Notice Published**
- **February 9, 2006 - Final Rule Published**
- **February 26, 2007 – Contractor WSHP submitted to DOE**
- **May 25, 2007 – Work only under approved WSHP**

Section 234C

Office of Health, Safety and Security

- Secretary of Energy Shall Promulgate Regulations for Industrial and Construction Safety and Health
  - Provide a level of protection that is substantially equivalent to that currently provided.
- Flexibility
  - Tailor to Reflect Activities and Hazards
- Penalties
  - Civil Penalties up to $70,000 for each Violation, or
  - Contract Penalties

10 CFR 851 General Provisions

HSS Office of Health, Safety and Security

- **Scope**
  - **Contractor activities at DOE**
- **Exclusions**
  - **Sites Regulated by OSHA**
  - **Navy Nuclear Propulsion**
  - **Radiological Hazards (10 CFR 835)**
  - **Transportation To and From DOE sites**

General Duty

- **Provide a place of employment free from recognized hazards that have the potential to cause death or serious physical harm**

Worker S&H Program

Office of Health, Safety and Security

- **Written Safety and Health Program**
  - Approved by Head of DOE Field Element
  - Describe How Contractor Will Comply with Requirements of Subpart C
  - Give Labor Timely Notice

Subpart C
Overview

Office of Health, Safety and Security

- Management and Worker Responsibilities
- Hazard Identification
- Hazard Prevention
- Safety and Health Standards
- Functional Areas (Appendix A)
- Training
- Record Keeping
- References

Safety and Health Advisory

10 CFR 851 "Worker Safety and Health Program"

September 2006

Purpose of this Advisory

This Advisory informs the Department of Energy (DOE) community that a new safety and health program has been established. This new Rule, 10 CFR 851, Worker Safety and Health Program will have a significant impact on operations at Department of Energy (DOE) facilities.

Background

The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule. DOE published the Rule in the Federal Register on February 9, 2006. It establishes worker safety and health requirements that govern the conduct of contractor activities at non-nuclear, as well as nuclear, sites.

What is the Purpose of the Rule?

The Rule requires that DOE contractor workers are provided with a workplace that is free from recognized hazards that can cause death or serious physical harm. To accomplish this objective, the Rule establishes management responsibilities, worker rights, safety and health standards, and required training. The Rule will replace the Contractor Requirements Document (CRD) of DOE O 440.1A "Worker Protection Management for DOE Federal and Contractor Employees."

Who is Covered by the Rule?

DOE contractors and their workers are covered by the Rule. Contractors include parent corporations and subcontractors that have responsibilities for performing work at a DOE site in furtherance of a DOE mission.

What is Required of DOE?

- Review and approve the contractor Worker Safety and Health Program (WSHP) by May 25,

What is Required of the Contractor?

The contractor must provide DOE with a WSHP that describes the methods they will use to implement the requirements of the Rule. Contractors must:

- Submit a WSHP to DOE by February 26, 2007,
- Give labor organizations timely notice of development of the WSHP,
- Comply with all requirements by May 25, 2007, and.
- Identify closure facility hazards and controls within 90 days of identifying those hazards.

Contractors have additional responsibilities such as:

- Establishing written safety and health policy and goals,
- Providing mechanisms to involve workers in the safety and health program,
- Establishing procedures for workers to report hazards and stop work, and
- Using qualified safety and health professionals.

What is Required of Workers?

Workers must comply with the safety and health requirements of the Rule. They also have certain rights such as:

- Having access to safety and health information,
- Observing monitoring of hazardous chemicals, and
- Receiving results of monitoring and inspections.

Penalties

Contractors that fail to comply with the Rule are subject to civil penalties up to $70,000.00 per violation or contract penalties.

Additional Sources of Information

- Your Safety and Health Office
- Information on the web:

Worker Rights and Responsibilities

Office of Health, Safety and Security

- **Workers Responsibility:**
  - Workers must comply with the requirements of the Rule that are applicable to their own actions and conduct.
- **Workers Rights:**
  - Workers have the right, without reprisal, to:

Worker Rights and Responsibilities

Office of Health, Safety and Security

- Participate in Activities on Official Time
- Have access to:
  - DOE safety and health publications;
  - Worker safety and health program;
  - Standards, controls, and procedures;
  - Safety and health poster;
  - Limited information on any recordkeeping log (OSHA Form 300); and
  - The DOE Form 5484.3 (the DOE equivalent to OSHA Form 301) that contains the employee's name as the injured or ill worker;

Worker Rights and Responsibilities

HSS
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- Be notified when monitoring results indicating overexposure to hazardous materials;
- Observe monitoring or measuring of hazardous agents;
- Have the results of their own exposure monitoring;
- Have an employee representative participate in the inspection of the workplace;
- Request and receive results of inspections and accident investigations;

Worker Rights and Responsibilities

Office of Health, Safety and Security

- Request and receive results of inspections and accident investigations;
- Express concerns related to worker safety and health;
- Decline to perform an assigned task when task poses an imminent risk of death or serious physical harm; and
- Stop work (exposures to imminently dangerous conditions or other serious hazards).

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Office of Health, Safety and Security

(Also available in Spanish)

Cooperation Path to Success

Office of Health, Safety and Security

- **Working Together:**
  - **Office of Worker Safety and Health Policy;**
  - **Office of Enforcement;**
  - **Office of General Counsel;**
  - **HQ. Program Office Subject Matter Experts; and**
  - **Field Subject Matter Experts.**
  - **EFCGO and NIEHS**
- **Resolved over 100 issues of concern**
- **Produced Position Papers**

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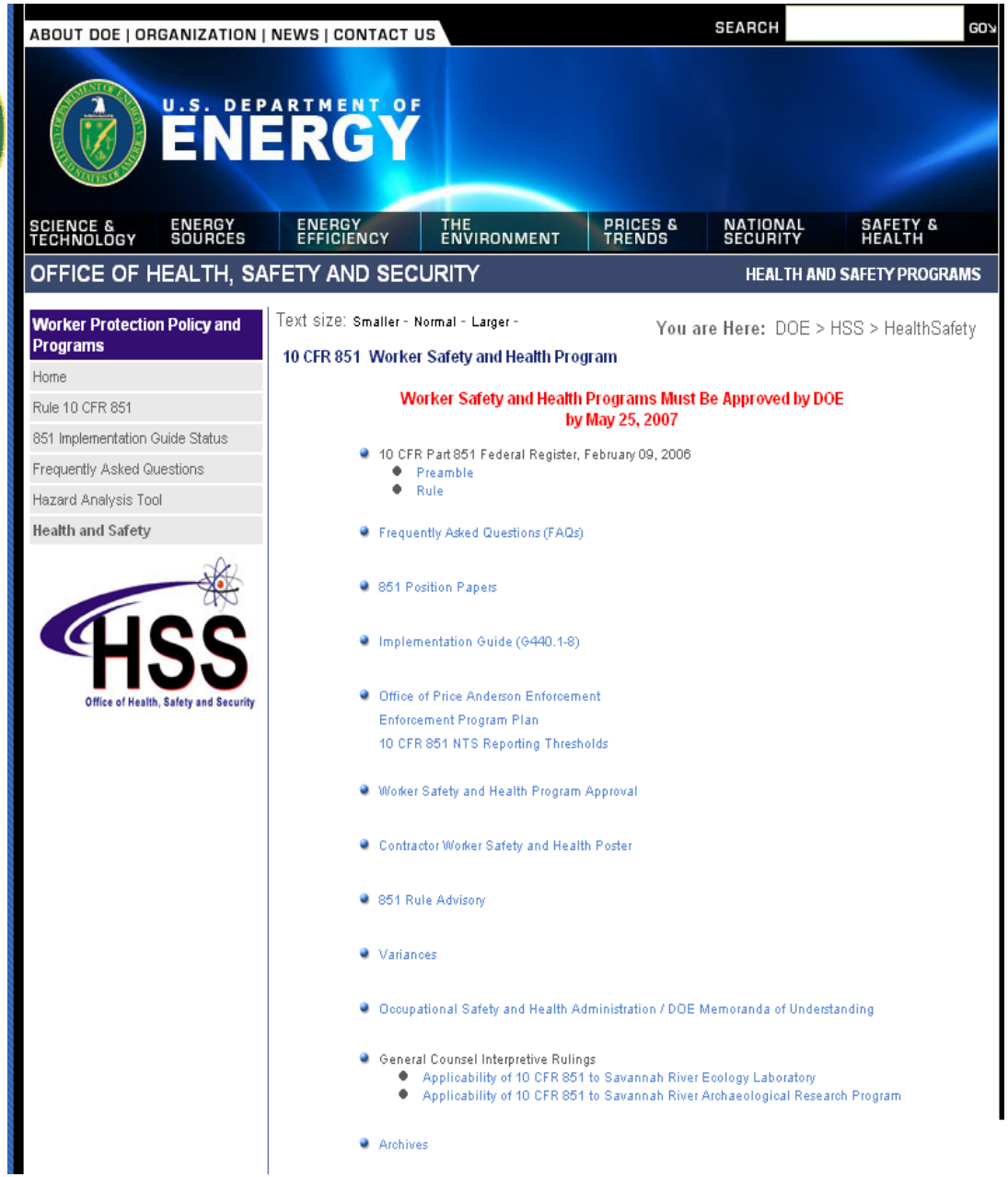
Implementation Assistance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Worker Protection Policy and Programs
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Hazard Analysis Tool
Health and Safety
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10 CFR 851 Worker Safety and Health Program
Worker Safety and Health Programs Must Be Approved by DOE by May 25, 2007
10 CFR Part 851 Federal Register, February 09, 2006
Preamble
Rule
Frequently Asked Questions (FAQs)
851 Position Papers
Implementation Guide (G440.1-8)
Office of Price Anderson Enforcement
Enforcement Program Plan
10 CFR 851 NTS Reporting Thresholds
Worker Safety and Health Program Approval
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Variances
Occupational Safety and Health Administration / DOE Memoranda of Understanding
General Counsel Interpretive Rulings
Applicability of 10 CFR 851 to Savannah River Ecology Laboratory
Applicability of 10 CFR 851 to Savannah River Archaeological Research Program
Archives

Implementation Assistance

Office of Health, Safety and Security

- **10 CFR 851 Web Site**
  - **http://www.hss.energy.gov**
- **Implementation Guide (DOE G440.1-8)**
- **Response Line for Questions**
  - **800-292-8061 or 301-903-9976**
- **Tele-videos**
- **Call or e:mail**
  - **301-903-6061 – Office of Worker Safety and Health Policy**

10 CFR 851 “Worker Safety and Health Program"
Frequently Asked Question’s

Updated December 11, 2006

Please Note: The responses to the following Frequently Asked Questions are not Official interpretations, only the Office of General Counsel may issue and interpretive ruling. Please see 10 CFR 851.7 and 851.8 for more information.

4. Pressure Safety
5. Firearms Safety
6. Industrial Hygiene
7. Biological Safety
8. Occupational Medicine
9. Motor Vehicle Safety
10. Electrical Safety
11. Nanotechnology Safety
12. Workplace Violence Prevention

Appendix B to Part 851—General Statement of Enforcement Policy

10 CFR 851.8 Informal Request for Information

Question 1: Will DOE use interpretive OSHA rulings?
Response: Yes, DOE will use OSHA Interpretation as when they are applicable and where applications are similar to general industry.

10 CFR 851.11 Development and approval of the worker safety and health program
Section (a) *requires that contractors prepare and submit to DOE a written worker safety and Health program.*

Question 2: Is DOE looking for procedures or high level documents in the Worker Safety and Health Program?
Response: Regarding the Worker Safety & Health Program, the word 'how' [851.10(b)], means to provide a description of the overall S&H Program for the contractor. Two examples of WSHPs are provided in the Draft Implementation Guide for 851. The WSHP is a program description and intended to be a high level document that may point to other lower tiered documents where the process of compliance is described or implemented.

Question 3: How will Worker Safety and Health Program transition between prime contractors when work scope is transferred between different contracts?
Response: Transitioning work scope between Prime Contractors or awarding new contracts will require a transition period and submittal of a WSHP. The transition period will be defined within the Request for Proposal or work scope. Compliance with 851, enforcement and penalties would still be enacted during the time allowed to modify and submit the WSHP.

Question 4: What constitutes "significant" with respect to submitting WH&S Program updates? Is "annual" measured from approval date or submission date?
Response: Significant is elaborated on in the Draft Implementation Guide for 851. Section 3.2.2.2 of the draft guide states: A change should be submitted to DOE if a hazard associated with a change in the worksite or processes, or any newly recognized hazards, is not effectively controlled by the measures in the currently approved worker safety and health program. Annual is measured from the Approved date of the WSHP.

Question 5: Will worker safety and health programs be required from subcontractors?
Response: Yes, However the detail of the Worker safety and health program will vary depending on the type of work the contractor will perform. It may be possible to include lower tier subcontractors under the prime contractors H&S program. All workers must be covered by an approved written safety and health program.

Question 6: Integrated Safety Management (ISM) currently requires a written program, will the rule change the scope or content of these plans?

Response: The rule does not change any requirements for ISM descriptions; however, it is possible to use the ISM description as a starting point for the written safety and health program.

Question 7: The rule requires worker involvement in the development of the program. What are the expectations for the level and extent of this involvement?
Response: Worker involvement provides the means to allow workers to develop and express their own commitment to health and safety. Involvement safety and heath activities such as inspections, hazard analysis, contributing to the development of safety procedures, training, and assisting in accident investigations are examples of how workers can contribute to the overall health and safety program.

Question 8: Do all changes in the worker safety and health program require DOE approval before they can be implemented?
Response: No, Contractors must submit an update to their program to the Head of the DOE Field Element for approval whenever a significant change or addition to the program is made. In determining whether a change is significant and an update is warranted, contractors should consider whether the change is needed to ensure the program accurately reflects actual workplace activities and related hazards and controls or approved program roles and responsibilities. Such changes would be considered "significant" and would require program update and submittal. Changes should not be implemented until approved. Other changes to the program that do not meet the significant criteria, can be included in the annual update.
As general guidance the term "significant change," which requires an update to the Worker Safety and Health Program (WSHP) submittal, means that if a hazard associated with a change in the worksite or processes, or any newly recognized hazards is not effectively controlled by the measures in the currently approved WSHP, a revision must be submitted. Examples may include: 1) a new contractor is awarded a contract with NNSA; 2) contractor accepts a new scope for a new toxic, reactive, flammable, or explosive chemical which was not addressed in the approved WSHP; 3) the toxicity or explosive hazard, such as chemical storage, has increased where there is a credible accident scenario that would impact the co-located workers or off-site public; or 4) a site not currently using explosives, begins a project involving explosives.

Question 9: What types of changes can be implemented without formal approval?
Response: (See question directly above)

Question 10: Can changes be approved by DOE through written correspondence and implemented before the worker safety and health program is revised?
Response: Yes

Question 11: Should proposed variances be included in the submitted worker safety and health program?
Response: Variances in the appropriate format and containing the required information may be submitted at anytime.

Question 12: Does each subcontractor require a written program? Does the Field Element review and approve the written program? There are many subcontractors who come on site with just a few workers for short durations of time.
Response: A contractor is defined as any entity, including affiliated entities such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission. The scope of the rule includes the "conduct of contractor activities at DOE sites". As such, all subcontractors are required to have a written program, however, the scope of the subcontractors' worker safety and health program should be tailored to the hazard and complexity of their work. There are numerous approaches to meeting the requirement that subcontractors are covered by a written WSHP. Some examples are: the subcontractor can submit its own WSHP to DOE for approval, the subcontractor can be included directly in the parent contractor's WSHP, the contractor can

require the subcontractor to prepare and submit a separate WSHP that the contractor includes in its submission to DOE, and the contractor can develop a templates of generic WSHPs tailored for different types of narrow-scope work that are pre-approved by DOE and require subcontractors to accept one of those WSHPs. All contractors and subcontractors must coordinate to ensure clear roles, responsibilities and procedures to achieve an integrated approach to ensuring the safety and heath of the worker consistent with 10 CFR 851.11(a)(2)(ii).

The contractor's WSHP should describe the approach and process used to flow down its relevant WSHP requirements to subcontractors. If the subcontractor will work to their own WSHP, the contractor should review the subcontractor's program to verify consistency with the parent WSHP.

Question 13: What is the best approach to document your health and safety program? The regulation provides several alternatives, but what are the pros and cons of each approach? How much detail is desired? If we follow the 10CFR835 approach is that acceptable? By discussing each approach to the plan and the pros and cons, Contractors will better understand what DOE wants and what will work best. The result may still be different types of plans, but the understanding will be more uniform and consistent and the plans will be of higher quality. Most labs are starting to work on their plans soon and a delay in discussing these approaches could result in rework.
Response: There is no best approach to documenting a health and safety program. It was the intent of the rule to utilize existing health and safety program documentation for meeting the requirements of the rule. For example, the contractor may wish to use their ISM description, Documented Safety Analysis, or Work Smart Standards as the basis for their written S&H program. Using the existing documentation along with new additional materials, if needed, to meet the requirements of 10 CFR 851 along with a crosswalk to the 10 CFR 851 requirements will allow the contractor to easily meet this requirement. Each CSO may have specific requirements for approval of the H&S program so contractors should work closely with the DOE Head of Field Element that is responsible for their site.

Question 14: What if labs extract only necessary portions of their Integrated Safety Management System (ISMS)? For example, environmental and radiological hazards are regulated elsewhere.
Response: 10 CFR 851 does not cover environmental or radiological hazards. It is possible to extract portions of the sites ISMS or to provide a crosswalk of the ISMS showing how it covers the requirements in 10 CFR 851.

Question 15: What is the significance and importance of crosswalks between the 851 requirements and laboratory safety documents?
Response: 10 CFR 851 requires a written Safety and Health Program that describes the methods for implementing the requirements of subpart C. A crosswalk of the laboratories safety documents may fulfill this requirement.
Section (b), discusses DOE evaluation and approval of submitted written worker safety and health programs.

Question 16: Do the Field Elements have the latitude to provide partial approvals of the written program?
Response: Yes, however, the Rule states (851.11 (b)(1) " Beginning May 25, 2007, no work may be performed at a covered workplace unless an approved worker safety and health program is in place…" . Only work that is within the scope of the facilities and activities that are covered by the approved worker safety and health program may be performed after the deadline. Other work may not be performed until it is included in the program and approved by DOE. Each CSO or Head of DOE Field Element may have their own timelines and procedures which they will put into place for approval of the programs they will be responsible for, so the contractor should be working with the Head of DOE Field Element to determine what DOE will accept.

Question 17: For changes in the written program, can "re-approvals" be just for the changed sections, or does the entire written program require a review and approval?
Response: The concern for the written program is any "significant change" and just as changes to the DOE directives system those changes must be approved. If no changes are made to the written program then a letter indicating no changes have been made may be submitted to DOE
Section (b)(3) *requires that contractors furnish a copy of the approved worker safety and health program, upon written request, to the affected workers or their designated representatives.*

Question 18: Will posting the worker safety and health plan on the site's website fulfill the requirements of 851.11(b)(3) for providing a copy of the program to affected workers?
Response: Posting of the worker safety and health program on the site's website would fulfill the requirements of 851.11(b)(3) as long as all employees have easy access to a computer which can access the information.
10 CFR 851.12 Implementation Section (b),*states: "Nothing precludes the contractor from taking additional protective action...".*

Question 19: Could DOE expand on the meaning of this and how the Office of Enforcement foresees enforcement actions? It would be helpful to tie in the adequacy of the ten functional programs of paragraph 10 CFR 851.27 into this discussion segment.
Response: The purpose of the rule, as stated in 851.1 establishes "requirements for a worker safety and health program that reduces or prevents occupational injuries, illnesses, and accidental losses by providing DOE contractors and their workers with safe and healthful workplaces." While program requirements, to include a set of standards and functional area requirements have been established in the rule, the requirements do not limit contractor responsibility. The rule does not limit contractors from adopting means, methods and practices not specifically referenced in the rule, to protect the safety and health of workers if provisions of the rule do not adequately protect workers. While each situation will be evaluated on its own merit, contractors will generally be held responsible if a condition presents a hazard to which workers are exposed, the hazard is recognized, the hazard is causing or has the potential to cause death or serious physical harm, and feasible and useful methods exist to correct the hazard.
10 CFR 851.20 Management responsibilities and worker rights and responsibilities Section 851.20(a)(2)*, requires use of "qualified workers".*

Question 20: Please expand upon how this section will be viewed and enforced.
Response: The idea of "qualified workers" is not new to 10 CFR 851. ISM and the DOE Acquisition Regulations (DEAR) both require personnel to possess the experience, knowledge, skills, and abilities necessary to carry out their responsibilities. The rule provides the example of certified industrial hygienists or safety professionals as qualified individuals, however, qualification may also be in the form of specialized training or work experience. DOE's Functional Area Qualification Standards (available at www.eh.doe.gov/techstds/standard/) are examples of qualifications for a number of safety disciplines.
Section (a)(7), *"Prompt Response to Reports" states contractors must have a prompt response to reports of job-related fatalities, injuries, illnesses, incidents, and hazards.*

Question 21: What is the definition of "prompt response"? Is it that the worker's item has been addressed, or is it that the worker receives feedback that the item has been initially received? A Safety Log Book entry on the back shift Friday may not be seen until the following Monday, then several days before it is acted on.
Response: The Rule does not have a specific definition of "prompt response", however, prompt should be considered to mean that action is undertaken without delay. Each situation will have to be considered with respect to the need for action or the consequence of inaction. In the example about the Safety Log Book above, if no one will be affected by the safety concern prior to the entry being seen on Monday and the

concern is acted on after it is reviewed and prior to any one being affected, then that would meet the definition.
10 CFR 851.21 Hazard identification and assessment Section (a)(5)*"Evaluate operations, procedures, and facilities" states that procedures must include methods to identify workplace hazards.*

Question 22: With respect to Closure Facility Hazards 90-day period for identification of hazards, when does the 90 days start? Is a facility that is cold & shutdown with only occasionally visits required to have hazards identified within 90 days of baseline or the next visit? Can portions of facilities be classified as Closure Facilities, while a small portion contains activities or operations? Are closed burial sites considered Closure Facilities?
Response: Contractors must submit to the Head of the DOE Field Element a list of closure facility hazards and controls within 90 days of identifying those hazards [851.21(b)]. Contractors should include their request for approval of the closure facilities that they have already identified as part of the worker safety and health program that must be submitted to the DOE for approval by February 26, 2007. That provides the Head of the DOE Field Element the prescribed 90 days to act upon the request by the Rule's May 25, 2007 implementation date. Closure facility hazards that are identified too late to be included in the first proposed worker safety and health program should be submitted for approval within 90 days of identification of those hazards. (Closed hazardous waste burial sites are not included in the definition of closure facilities.)

For existing hazards identified in closure facilities, the most common approach to controlling worker exposure to closure facility hazards in a "cold and shutdown" closure facility is to control access to the facility. With access control, the closure facility hazards only pose risks to workers who have a need for access (e.g., for surveillance, maintenance, and preparation for decontamination and decommissioning activities). The hazards of those activities must be identified and controlled by the site's work control process, and the hazards updated as often as necessary to ensure safe access for needed activities. Portions of a facility may be designated as a closure facility as long as the hazards of the closure facility portion are isolated from workers that occupy the balance of the facility.

Question 23: Baselines are not necessarily available for all facilities, particularly those judged (through professional expertise) to not warrant a baseline. What does "appropriate" mean in this situation?
Response: 851.21(c) initial baseline information is the compilation of information gathered for the first time to meet the requirements of 851.21(a). The resultant information should be commensurate with the hazards and risk to workers. This information could be in the form of a facility baseline hazards assessment for occupied operations or laboratories; it could be routine safety inspections of office facilities; or it could be a list of known or anticipated hazards in a locked/barred old process building. The focus is to obtain hazard information and provide controls commensurate to the work being performed and the exposure to workers. The initial baseline information may be from multiple sources and tailored to the hazards and risk to worker. The baseline information may be in the form of: IH baseline hazard assessments from DOE O 440.1A, Preliminary Hazard Analysis, Fire Hazard Analysis, Nuclear Safety categorization analysis and IH/IS inspections of the work site. These documents and processes most likely exist for most facilities, as defined in existing site procedures or enacted by other DOE requirements and orders.

Question 24: The "Wall to Wall" baseline evaluation, as discussed in the Implementation Guide, would generate very discrete list of hazards needing correction. Is this same level of detail expected as a facility goes through D&D? Some non-compliance hazards may be present for minutes, hours, days. Would DOE need to approve contractor mitigating strategies?
Response: It was not the intent of this section to undertake a new "wall to wall" evaluation. Keep in mind the general duty of the rule is to "Provide a place of employment that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers". A baseline hazard identification and analysis should have already been undertaken as this is required by 48 CFR Federal

Acquisition Regulations for the Department of Energy. The results of previous baseline evaluations remain valid for use under 10 CFR 851.

The procedures for undertaking D&D activities should describe the process which will be used to identify and analyze (assess the risk) any existing workplace hazards or those hazards which have not already been identified. The contractor should also provide information on how the worker will be protected from potential hazards that may be encountered during the work being undertaken.

The Head of DOE Field Element, in concurrence with the Cognizant Secretarial Officer, is authorized to approve a unique set of controls to be used for closure facilities that takes into account the costs and benefits of making improvements to facilities scheduled for closure.

The Head of DOE field element determinations the level of detail that DOE exercises in approving control or mitigating strategies.
10 CFR 851.22 Hazard prevention and abatement Section (a) *states: "Contractors must establish and implement a hazard prevention and abatement process to ensure that all identified and potential hazards are prevented or abated in a timely manner."*

Question 25: There are currently a number of weapon systems that are being approved for fielding by the Protective Forces in support of the Design Basis Threat that potentially pose significant hazards, yet there is no "standard" to evaluate what are appropriate controls or satisfactory abatement. Will military standards be acceptable?
Response: The use of Military Standards is an acceptable approach when there are no DOE standards in place addressing the weapon or weapon system. The requirement of this section is for, “the contractor has to address and abate the hazard” through use of approaches delineated in paragraph 851.22(b). An additional approach to use, prior to the acquisition phase, would be to follow the guidance provided in paragraph (c) of that section, and conduct an analysis of the proposed systems with the intend of determining what, if any, impact would occur on the facility. This process should provide an adequate overlay of weapons hazards that can be reviewed and address prior to acquisition.

Question 26: Regarding National Fire Protection (NFPA) codes and standards, explain the apparent incongruity in their delineation in the Rule. Specifically, two are explicitly listed in Section 851.23, Safety and Health Standards. Whereas, in Appendix A, Section 2, under “Fire Protection,” a global statement is used to stipulate their applicability.
Response: The two NFPA standards listed in 10 CFR 851.23 are the only NFPA standards specifically required by all contractors. The text in Appendix A reflects the fact that contractors are subject to a different set of NFPA codes and standards, depending on their specific circumstances. For example, contractors that are responsible for site fire departments are subject to the provisions of NFPA Standard 1710, among others, which govern fire department-related safety and health issues. This standard would not apply to sites which rely on off-site fire departments for site emergency services.

Question 27: How are facilities expected to address known/currently identified legacy issues? Would maintaining a list of known hazards (especially those not being actively abated) provide a shield against an enforcement action?
Response: It is intended that abatement actions be taken in a timely manner and in consideration of the non-abated hazards. If the condition cannot be abated in a timely manner, due to other constraints, the Contractor is expected to ensure that adequate compensatory measures are put in place to protect workers during the interim period.
The DOE Enforcement Policy gives broad discretion to the DOE Office of Enforcement when determining whether mitigation credit will be given to the contractor. Factors that positively influence the mitigation

decision are timely self-identification of the noncompliances by the Contractor, prompt and completed reporting of such noncompliances to DOE, prompt correction of safety noncompliances in a manner that precludes recurrence, and identification of modifications in practices and facilities that can improve worker safety and health. However, simply identifying or listing known noncompliances will not provide a "shield" against enforcement action.

10 CFR 851.23 Safety and health standards
Section (a) *states: "Contractors must comply with the following safety and health standards that are applicable to the hazards that are applicable to the hazards at their covered workplace".*

Question 28: Subparagraph (9) sites the "American Conference of Governmental Industrial Hygienists (ACGIH) 'Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices,' (2005)" which implies that noise exposures above 140 dB are prohibited. A number of the weapons or pyrotechnic devises employed by Protective Forces provide impact noise significantly above 140 dB (at least 175 dB). How can Protective Force personnel be provided with protection that would allow them to follow the standard?
Response: The 2005 TLV for Noise indicates that the MIL-STD-1474C provides hearing protection guidance for situations where impulses above a C-weighted peak of 140 dB occur.

10 CFR 851.25 Training and Information

Question 29: Does the contractor have the responsibility to train subcontractors or to assure that they have the appropriate training?
Response: The worker safety and health training and information program (851.25) is an integral component of the WSHP. If a subcontractor works under the contractor's WSHP, then the contractor's WSHP should describe the approach and process used to flow down the training program requirements to the subcontractor. The training program requirements that flow-down should be consistent with the scope and complexity of the work to be performed by the subcontractor. If the subcontractor will work to their own WSHP, the contractor should review the subcontractor's training program to verify consistency with the contractor's program. One acceptable approach would be to require that subcontractor employees be trained through the contractor's training program. Alternatively, the subcontractor's own training program should be acceptable once it is verified that it is consistent with the contractor's program.

10 CFR 851.26 Recordkeeping and Reporting
Section (a), *specifies Contractor recordkeeping requirements.*

Question 30: Could DOE expand upon the recordkeeping expectations, including the complete hazard inventory, assessment, measurement and control?
Response: Contractors must establish and keep accurate records of all exposure monitoring data as well as the objective data. Exposure Monitoring data should include:

- Exposure levels;
- The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;
- A description of the sampling and analytical methods used and evidence of their accuracy;
- The type of PPE worn, if any;
- Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and
- The environmental variables that could affect the measurement of employee exposure.

Where it has been determined that no monitoring is required, a record of the objective data relied upon to support the determination that no employee is exposed at or above the action level should be maintained. Contractors must keep exposure monitoring records for 75 years which is consistent with the recordkeeping requirements of 10 CFR 850 "Chronic Beryllium Disease Prevention Program" and the need to maintain records for epidemiological studies.

Other Objective Data:

Objective data records should be kept as long as the employer relies on this data.

Question 31: Can you clarify 851.26(a)1 hazard inventory requirement? Is it a list of non-compliances, an inventory of hazards identified in Job Hazard Analysis, Preliminary Job Hazard Analysis or facility baseline hazard assessments?

Response: The 851.26 (a)1 requirement to maintain records of hazard inventory information refers to the compilation of information, materials and documents generated from the contractor's activities under 851.21(a), (b) and (c).

10 CFR 851.27 Reference sources

Section (b) *lists standards incorporated by reference, including several American Society of Mechanical Engineers (ASME) standards, some of the referenced standards are dated as late as 2003.*

Question 32: For older buildings (which meet obsolete building codes), how will their infractions be viewed? Is it acceptable to comply with ASME codes from the original design specifications, or does DOE expect contractors to use updated ASME codes? What about buildings that are built to meet state life safety codes?

Response: DOE agrees with the "code of record" concept if it is contained in the specific standards. ASME codes, in general, refer to new construction. Existing buildings which met the original design specifications do not need to be re-built. However, if systems are replaced or new construction takes place they must meet the requirements of the codes listed in 10 CFR 851. NOTE: this issue is being discussed with the Office of General Counsel and new guidance may be issued.

Question 33: Many of the standards incorporated by reference in the Rule provide for a local "Authority Having Jurisdiction (AHJ)" type of officer who has the discretion to determine "equivalencies" to the standards. For some of these standards, such as the National Fire Protection Association (NFPA) standards, DOE directives provide for local determinations at the Site Office or Contractor level. The rule is silent on equivalencies and related determinations. How will DOE address local discretion on equivalencies, and what will be DOE's expectations for Field Offices?

Response: The DOE Fire Protection Design Criteria (DOE-STD-1066-99) and the DOE Glossary of Environment, Safety and Health Terms (DOE-HDBK-1188-2006) define the AHJ as the Head of the DOE Field Element or designee unless otherwise directed by the Cognizant Secretarial Officer. Section 1.3 of the DOE Electrical Safety Handbook (DOE-HDBK-1092-2004) indicates that the AHJ for electrical safety can be any DOE person having the requisite knowledge and abilities that is designated to be the AHJ by DOE management. Furthermore, the preamble to the Rule on Page 6912 states: "The recommendation made by two commenter's (Exs. 36, 42) that the Authority Having Jurisdiction (AHJ) be responsible for approving fire safety codes and standards equivalencies (as required by DOE Order 420.1A) instead of the DOE site manager (as would be required by the proposed rule) is acceptable to DOE."

For implementation of the Rule, the AHJ should be a DOE person that has the requisite knowledge and abilities or has access to someone else that has the knowledge and abilities

Certain NFPA standards, as well as certain applicable DOE fire safety guidelines, include provisions for the approval of "equivalencies," which would be applicable in the implementation of the respective NFPA

standards. NFPA standards in the Rule should be implemented in accordance with their embedded equivalency provisions. Existing equivalencies that were granted in accordance with the provisions of an NFPA standard in the Rule should continue to be acceptable to DOE and not require a variance. The equivalency process is separate from the variance process outlined in subpart D of the Rule.

Question 34: Are the standards listed in 851.27 enforceable?
Response: Yes, 851.23 lists a set of specific Safety and Health Standards (by number, title, and date) that Contractors are required to comply with as part of 851. However, other portions of 851 (e.g., Appendix A, Section 4, Pressure Safety) include additional national consensus codes and standards that must be complied with by Contractors. 851.27 provides the compiled list of all of the codes and standards incorporated by reference throughout 851. The mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of the codes and standards incorporated by reference and listed in 851.27 have the same force and effect as other requirements specified throughout 851.

Question 35: Section 10 CFR 851.27 refers to NFPA 70 and 70E what other NFPA codes are required?
Response: NFPA 70 and 70E are specific to Electrical Installation and Worker Electrical Safety they are called out from other NFPA codes because they have direct application to all sites in the DOE Complex. 851 Appendix A, 2-Fire Protection address remaining NPFA codes as applicable to fire protection, life safety, structures, fire and emergency response.

10 CFR 851.31 Variance process
Section (d)(3) *National defense variance, appears to have a typographical error in paragraph (i) where it states "...in addition to the content required in paragraph (b) of this section, include:"*

Question 36: Should the correct reference should be paragraph (c).
Response: Yes, that is a typographical error. The reference should be paragraph (c).

Question 37: Are these types of Variances only for NNSA sites, or would the criteria apply for the Protective Force in Safety Guards & Security, and in Fire Rescue operations at other DOE sites? Example: During training and in actual emergency or security incidents these workers could be placed at elevated heights in access of 6 or 10 feet with no fall protection, could lack eye and ear protection, etc. This is required due to the nature of the profession, and must be trained to as well as conducted in actual emergencies.
Response: Variances granted for National Defense under 851.31(d)(3), are not specific to NNSA sites. Regarding your example: Training and actual emergency incidents involving protective forces or fire responders are recognized to involve certain types of unmitigated hazards. During training exercises it would be expected that those hazards are identified through a hazard analysis process and that the risk be controlled to the extent possible-while providing the necessary 'real life' training. A variance would not have to be submitted for approval of these types of protective force or fire response type training and events; but the standards and guidance of the industry for risk evaluation and mitigation during drills and training would need to be met.

10 CFR 851.32 Action on Variance Request

Question 38: This section indicates that a variance may be denied "if enforcement of the violation would be handled as a de minimis violation". This doesn't appear to present a clean process for the Contractor to gain approval to continue operations with a de minimis noncompliance. Would this set up the Contractor for a "willful" violation? (Per Appendix A, DOE indicates that "a Notice of Violation will virtually always be issued for a willful violation".)

Response: No. As stated in 10CFR851.32, no enforcement actions will be taken for de minimis violations. Therefore, regardless of the reason for the de minimis violation, it will not be subject to enforcement action.

Question 39: Is there any thought to defining the de minimis process (i.e., the process that Contractors should use to gain DOE acceptance of de minimis noncompliances) in the Implementation Guide? Definition of de minimis seems to need clarification. What is the possibility of using the OSHA interpretations for de minimis? What is the possibility of allowing the Site Office to be the approver for de minimis violation classifications (OSHA or defined process)?
Response: As stated in 10 CFR 851.32, a de minimis violation (or noncompliance) is a deviation from a requirement of a standard that has no direct or immediate relationship to safety or health. This section further states that no enforcement action will be taken for de minimis violations. This definition and enforcement position are fully consistent with long standing OSHA precedents and OSHA has further defined a number of example de minimis violations as discussed in the preamble to 10 CFR 851.

While 10 CFR 851 does not require any particular actions or processes to be utilized by Contractors in relation to de minimis noncompliances, Contractors may choose to describe their processes for disposition of de minimis noncompliances as part of their WS&H Program description document. For those requirements that include provisions for local authorities to approve equivalencies, etc., approvals by such local authorities can eliminate the noncompliance. For those requirements that do not include provisions for local authority approval, the Contractor could seek DOE approval (if determine to be cost-effective and the noncompliance is intended to be permanent) through discussion in their WS&H Program description document. If the contractor intends to correct a de minimis noncompliance, it should be managed in the Contractor's corrective action program.

10 CFR 851.40 Investigations and Inspections
Section (a) *states that the Director may initiate and conduct investigations and inspections.*

Question 40: How will the Office of Enforcement conduct on-site audits? Will they perform strict compliance inspections, or programmatic reviews?
Response: Subpart E – Enforcement Process, which includes 851.40, Investigations and Inspections, outlines the scope of the enforcement process. The Director has discretion in using the means outlined in this section to affect improvements in contractor safety and health. Prototype inspections conducted during the summer of 2006 provided insight for future enforcement activities. Since 851 encompasses both program and standard requirements, a violation of a standard may also involve violations of program requirements and vice versa. Therefore, an inspection may not be limited to compliance with standards. The Office of Enforcement plans to conduct investigations, inspections and program reviews, which require on-site enforcement activity. While little or no notice may be given prior to an inspection, inspections may be conducted separately, but will more likely be performed in conjunction with an investigation or program review.

10 CFR 851 Appendix A - Worker Safety and Health Functional Areas

1. Construction Safety
Section 1 (d), *states that construction contractors are required to prepare a written construction project safety and health plan.*

Question 41: How are these plans approved? Do construction contractors also prepare a written program? Are they separate from the laboratory written program?
Response Per Appendix A, Section 1(d), the construction contractor must obtain approval of the plan from the construction manager prior to commencement of any work covered by the plan. This section further

states that the construction project safety and health plan need not duplicate those provisions that were previously submitted and approved as required by Section 851.11 of the rule.

Question 42: Does designated Construction Contractor Representative (CCR) have to be available at all times during active construction? Can same individual check multiple construction sites each day or be on one site only? Can these people be designated by title –vs. name?
Response: The Construction Contractor Representative (CCR) should be named in the Construction Project Safety and Health Plan (851, App A, 1(d)). The qualifications for the CCR must be included in the Construction Project Safety and Health Plan. Details of the CCR's duties and coverage (individual or multiple job sites) should be defined by the contractor in the Construction Project Safety and Health Plan. Details of designating the CCR by name or by job title are left to the contractor to define in the Construction Project Safety and Health Plan.

2. Fire Protection

Question 43: As a contractor fire protection program manager or fire chief, what should be one of my first steps now that the Rule has been published?
Response: Consider that within 380 days from the publication of the Rule contractors are required to submit for evaluation a Worker Health and Safety Program document. Contractor fire protection program mangers and fire chiefs should initiate an (informal) review to determine if existing documentation is sufficient to define a "comprehensive, multi-faceted fire protection and emergency response program" as required by the Rule. Such documents should address the "applicable National Fire Protection Association (NFPA) codes and standards" that define the program. This effort should be initiated after consultation with the DOE Authority Having Jurisdiction (AHJ) for fire protection. And this effort should be coordinated with other contractor representatives that are developing the official response to this requirement of the Rule. Perceived weaknesses in fire protection and emergency services program documentation should be addressed with appropriate enhancements.

Question 44: Where might a contractor fire protection program manager or fire chief find guidance on the development of comprehensive, multi-faceted fire protection and emergency response program documentation?
Response: A "model" fire safety program document that can be downloaded and edited is available off of the DOE Fire Protection Program Web Site located at:
http://www.hss.energy.gov/nuclearsafety/nsea/fire/models/models.html
It has been reviewed and approved by the DOE Fire Safety Committee. The model was developed by Howard M. (Bud) Bucci of Fluor-Daniel Hanford Company, Inc. under a contract with the DOE Office of Environment, Safety and Health. Note that references in it may need to be updated and that all of the elements contained therein may not be applicable to individual contractors.

Question 45: Regarding NFPA codes and standards, explain the apparent incongruity in their delineation in the Rule. Specifically, two are explicitly listed in Section 851.23, Safety and Health Standards. Whereas, in Appendix A, Section 2, under "Fire Protection," a global statement is used to stipulate their applicability.
Response: The text in Appendix A reflects the fact that contractors are subject to a different set of NFPA codes and standards, depending on circumstances. For example, contractors that are responsible for site fire departments are subject to the provisions of NFPA Standard 1710, among others, which govern fire department-related safety and health issues. This standard would not apply to Honeywell FM&T, which is responsible for the Kansas City site fire brigade. (NFPA 600, among others, is applicable). Similarly, neither of these standards applies to contractors who rely on off-site fire departments for site emergency services.

Question 46: How should contractors interpret the adjective "applicable" that is used in conjunction with NFPA codes and standards that are made mandatory in Appendix A, Section 2, under the Fire Protection functional area of the Rule?
Response: Applicability can be considered from at least two perspectives. The first relates to the entire code or standard. For example, NFPA Standard 115, "Standard for Laser Fire Protection" would not be applicable in its entirety to a contractor that conducts no work that involves lasers or in an area containing lasers. The second refers to specific sections or paragraphs. For example, those sections and paragraphs of NFPA 101, "Life Safety Code" that govern hospitals would apply to no DOE contractors because there are no DOE hospitals. Those sections and paragraphs of NFPA 101 that relate to "Business Occupancies" (such as an office) would be applicable to all DOE contractors that occupy on-site and off-site (leased) office areas or buildings or conduct DOE-related work in such offices.

Question 47: Considering the fact that DOE facilities have been constructed over a 50(+) span of time under different codes and standards, how should the "code of record" concept be applied when considering the two NFPA codes (70 and 70E) listed in Section 851.23, Safety and Health Standards, and the global requirement to comply with "applicable NFPA codes and standards" in Appendix A, Section 2, under "Fire Protection?"
Response: The specific editions of NFPA 70 and 70E that are delineated in Section 851.23 are applicable to all DOE contractors, regardless of the "code of record." Contractors must either: comply literally with the provisions of these editions; must demonstrate "equivalent" safety under the equivalency provisions of these standards, or contractors can pursue a "Variance" under the Rule's procedures for requesting approval of variances. Excluding the above two NFPA codes, the remaining NFPA codes and standards that are applicable to any contractor are subject to "code of record" provisions. There is a distinction because the Rule differentiates between the two above-referenced codes and the remaining NFPA codes and standards that are applicable under the provisions of Appendix A to individual contractors. Additional guidance on the "code of record" concept can be found in DOE-G-440.1/E / DOE-G-420.1/B, "Fire Safety Program" or its successor Guide.

4. Pressure Safety

Question 48: The 10CFR851 Final Rule Supplementary Information material published in the Federal Register, Volume 71 Number 27 contains DOE analysis and response to comments on the proposed rule. In the section addressing comments on Appendix A, Section 4, Pressure Safety, DOE's response (Pages 6913, 6914) to a request for definition of "pressure systems" has expanded the universe of piping and components covered under the Rule. Specifically, DOE notes that the DOE Pressure Safety Committee has, in the draft Implementation Guide to DOE O 440.1A, defined pressure systems to include vacuum systems. The comment resolution discuss provides the rationale that vacuum systems should be designed to ASME pressure system and component codes due to potential for catastrophic failure due to backfill pressurization. What Pressure Safety standards apply?
Response: As the Final Rule is currently written, components and systems must conform to the ASME codes referenced in Appendix A, Section 4 and incorporated by reference in Section 851.27. If vacuum systems are not specifically covered in the codes, they are not included in the applicability of the Final Rule.

5. Firearms Safety

Section 5 (c), states: "Contractors must ensure that firearms instructors and armorers have been certified by the Safeguards and Security National Training Center to conduct the level of activity provided. Personnel must not be allowed to conduct activities for which they have not been certified."

Question 49: Currently Protective Forces throughout the DOE complex are fielding weapon systems that the National Training Center does not have the qualified personnel or the facilities to provide this training/certification. Currently contractors are using the weapon manufacturer for training/certification, and

obtaining additional training via the military with the concurrence of their local DOE. Will this be acceptable?
Response: Yes, in the situation where National Training Center does not have the qualified personnel or the facilities to provide training/certification of firearm instructors and armorers, contractors are allow to use the weapon manufactures for training/certification, and obtaining additional training via the military with the approval of the local DOE Official. Documentations of the weapon manufactures certifications are still require in the instructors/armorers training file defining the system certified on. Information should make available for future assessment or audits.

6. Industrial Hygiene

7. Biological Safety

Question 50: Biological Safety, paragraphs (a)(1)(i) and (a)(2) require contractors to "Review any work with..." and Maintain an inventory and status of..." biological etiological agents. Must all biological agents be and inventoried and submitted to DOE in an annual report?
Response: It is good laboratory practice to maintain an inventory of all biological agents in use in a laboratory. However, it is not necessary to report the complete inventory of all biological agents to the DOE. The Rule states that an annual status report describing the status and inventory should be submitted. This can be accomplished by providing information on all select agents and information on how and where inventories of non-select agents are maintained for each laboratory.

8. Occupational Medicine

Question 51: The requirement for a contractor to "...establish and provide comprehensive occupational medicine services..." to anyone who is employed at a site for more than 30 days. It is assumed that the intent is to flow the requirements down to subcontractors, and not require the Site Occupational Medical Programs to provide services to subcontractors. Please validate.
Response: It is the intent that contractors/subcontractors provide for occupational medicine services to their employees who are employed at a site for more than 30 days. The contractor/subcontractor may choose to arrange for services through the site occupational medicine clinic, or through a private local occupational medicine clinic or hospital.

Question 52: Section 8.j.1. & 8.j.2: state that the OccMed provider must "...manage the principal preventable causes of premature morbidity and mortality." Also, ". . .prevent and manage these causes of morbidity when evaluations demonstrate their cost effectiveness." Metrics to "manage" these health issues are also required. Since the causes of premature morbidity/ mortality all non-occ.(CV disease, stroke, breast/colon ca, HTN, DM), that management of personal illnesses places the Site Medical programs in competition with the private sector, and treatment or "management" of personal diseases opens DOE to the liability of personal disease. Is the intent to inform the employee/patient of personal risk factors so that such diseases can be appropriately treated by their physician?
Response: Site OM clinics should be aware of the major causes of morbidity among the site's worker population, and to offer cost effective prevention and management opportunities for the at-risk workers. Education of employees about disease categories and generic methods of prevention is appropriate, but "management" of their personal medical and lifestyle choice issues is not required of the site OM clinics.

The "metrics" will allow site OM clinic might to track effectiveness of education and health promotion activities for preventive conditions such as hypertension and diabetes to determine the numbers of workers who participate and if the participants acted on recommendations.

The intent is that the contractor, working with the site occupational medicine director, determine the type and extent of any prevention or disease management activity that should be offered to the workforce based on whether the activity has a reasonable chance of resulting in changed behavior and health status sufficient to justify the cost of the activity.

Question 53: Our site currently does not provide Psychological testing when employees return to work. Is this a new requirement of 851?
Response: Psychological testing is not required for return-to-work evaluations under 10 CFR 851, but a psychological evaluation may be requested by the DOE medical examiner conducting the return-to-work evaluation. The 851 Rule 8(g)(iv) states that "After a work-related injury or illness or an absence due to any injury or illness lasting 5 or more consecutive workdays (or an equivalent time period for those individuals on an alternative work schedule), a return to work evaluation will determine the individual's physical and psychological capacity to perform work and return to duty."

10 CFR 851 Appendix B General Statement of Enforcement Policy
VII. Enforcement Conferences

Question 54: What are the roles of the DOE Headquarters Primary Secretarial Office and the DOE Field Offices for (a) NOV hearings, (b) enforcement at the site, (c) other enforcement or rule responsibilities?
Response: Over the past 13 years the Office of Enforcement has worked closely with its DOE counterparts at the Program, Field and Site Office levels in the nuclear safety enforcement. The Office of Enforcement works through the Program, Field and Site Offices when an enforcement action is contemplated. They participate in enforcement proceedings and review and comment on many enforcement documents. These close working relationships and protocols will be similarly exercised in worker safety and health enforcement. In addition to site-specific and program-specific DOE assessment and oversight responsibilities, 10 CFR 851 outlines specific responsibilities, e.g., coordinating on the selection of either a civil or contract penalty when an enforcement action is planned, and reviewing and approving contractor worker safety and health programs and variances.

IX. Enforcement Actions
1. Notice of Violation: *In part (d) the regulation discusses DOE's expectation for contractors to have proper management and supervisory systems in place to assure that all activities at covered workplaces are carried out in compliance with the Rule.*

Question 55: When a violation is of a subcontractor to the M&O, what are the enforcement expectations of the contractor and DOE? Is the prime contractor issued fines or expected to provide input to the NOV hearings, for example?
Response: Whenever an employee or employees are exposed to conditions that violate 10 CFR 851 requirements, the Office of Enforcement may conduct an investigation and take enforcement action if necessary. The Office of Enforcement will make every effort to determine which parties were responsible for the violation. The DOE Enforcement Program Plan contains the Multiple Employer Worksite policy which describes the enforcement activities carried out pursuant to this policy. The Office of Enforcement will focus on determining which contractor(s): had responsibility for controlling the worksite, creating the hazard and correcting the hazard, and who exposed employees to the hazard. If it is determined that both the prime and the subcontractor are subject to enforcement action, the enforcement process will be followed for each party. If the subcontractor is the only party subject to an enforcement action, the subcontractor may request prime contactor support or testimony at their enforcement proceeding, but this decision is up to the prime and subcontractor to decide. [DOE's role was addressed in a previous question.]

4. Identification and Reporting: *The regulation and guide discuss reporting Severity Level I and II non-compliances. Interpreting how to categorize the non-compliances into Severity Level I or II or de minimus could vary greatly between labs.*

Question 56: What guidance can DOE provide to minimize categorization differences between facilities? One possible discussion topic might be to have each lab contribute 3-5 non-compliance scenarios, and then put this together into a 1-2 hour workshop. The workshop would be: How to categorize your non-compliances. By discussing the logic used we could obtain a degree of consistency in our approach. Example: employee is observed wearing a dust mask in a work environment that requires a full-face respirator, the potential exposure exceeds the PEL. This is a serious violation, but is it likely to result in death of serious injury? What is the severity level of this example?
Response: It is important to distinguish between severity levels as defined in the rule and relative risk. Appendix B to the rule defines a Severity Level I violation as a "serious" violation – where there is a potential that death or serious physical harm could result from a condition, practice, mean, method, operation, or process. A Severity Level II violation is an "other-than-serious" violation - where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm, but does have a direct relationship to safety and health. Generally, Severity Level II violations involve injuries/illnesses not resulting in hospitalization, or temporary, reversible illnesses requiring only minor supportive treatment. Once the severity level has been determined, the relative risk can be evaluated by assessing the severity of injuries/illnesses and the probability that the injuries/illnesses could occur. The 851 Implementation Guide suggests several methods that can be employed to assess relative risk.

Question 57: What are the thresholds and criteria for self reporting into the Noncompliance Tracking System (NTS)?
Response: In April 2006, the draft Worker Safety and Health NTS Reporting Thresholds were posted on the Office of Enforcement web page at: http://www.eh.doe.gov/enforce/2006presentations/day2/WSH_NTS_Thresholds_Trial_Period.pdf. A 6-month trial reporting period is underway. From this experience the reporting thresholds will be revised as necessary in advance of the effective date of the rule.

Question 58: Could DOE describe in more detail, with examples, the three levels of violation severity, Level 1, Level 2 and de minimus?
Response: A Severity Level I violation is a "serious" violation – where there is a potential that death or serious physical harm could result from a condition, practice, mean, method, operation, or process.

Example 1: An employer does not evaluate the workplace to determine if any spaces are permit-required confined spaces (29 CFR 1910.146(c)). An employee could enter a confined space and succumb to hazardous environmental conditions, resulting in death.

Example 2: An employer fails to ensure that employees wear proper eye protection during heavy grinding (29 CFR 1926.102). Employees could get flying particles in their eyes, requiring hospitalization with a limited period of disability.

Severity Level II violations are "other-than-serious" violations - where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm, but does have a direct relationship to safety and health. Generally, Severity Level II violations involve injuries/illnesses not resulting in hospitalization, or temporary, reversible illnesses requiring only minor supportive treatment.

Example 1: Material Safety Data Sheets (MSDS) are not in the workplace even though chemical manufacturers and importers are required to obtain or develop a material safety data sheet for each hazardous chemical they produce or import. (1910.1200(g)(1) or 1926.59) Employees could be properly protected from exposure to hazardous chemicals if MSDSs were made available and as a result, employees were able to implement the proper hazard controls.

Example 2: First aid kits are not available or are incomplete, where the standard requires that in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available (29 CFR 1910.151(b)). Employees would not be afforded immediate first aid, if needed.

Example 3: Workers dip their cups into a container to draw drinking water, where the standard strictly prohibits such facilities and practices (1926.51 and 1910.141). Workers could communicate an infection from this practice and incur loss work days on account of sickness.

De minimis violations are a deviation from the requirement of a standard that has no direct or immediate relationship to safety and health. The term is only used in conjunction with violations of the 29 CFR series of standards listed in 10 CFR 851.

The term de minimis is often misused. It should not be used to describe a low risk hazard. It also should not be used to describe a hazard that is controlled using equivalent methods allowed by the applicable standard. Also, it should not be used to describe hazard controls that are implemented that are not in accordance with the hierarchy of controls.

A de minimis condition exists when an employer complies with the clear intent of the standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health. These deviations may involve distance specifications, construction material requirements, use of incorrect color, minor variations from recordkeeping, testing, or inspection regulations, or the like.

Example 1: 29 CFR 1910.27(b)(1)(ii) allows 12 inches (30 centimeters) as the maximum distance between ladder rungs. Where the rungs are 13 inches (33 centimeters) apart, the condition is de minimis.

Example 2: 29 CFR 1910.28(a)(3) requires guarding on all open sides of scaffolds. Where employees are tied off with safety belts in lieu of guarding, often the intent of the standard will be met, and the absence of guarding may be de minimis.

Example 3: 29 CFR 1910.217(e)(1)(ii) requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom used, inspection and testing prior to each use is adequate to meet the intent of the standard.

Example 4: 29 CFR 1910.23 (e)(1) establishes a nominal vertical height of 42 inches for top rails of standard railings that guard floor and wall openings and hoes. But OSHA Compliance Directive STD 01-01-010 - STD 1-1.10 - Height of Guardrails in General Industry Applications, provides that existing guardrailing shall consist of a top rail, intermediate rail, and posts, or equivalent, and shall have a minimum vertical height of 36 inches to 44 inches from the upper surface of the top rail to the floor, platform, runway or ramp level. 2. Guardrailings with heights greater than 44 inches are permissible provided the extra height does not create a dangerous situation for employees. Openings beneath the top rail that would permit the passage of a 19 inch or larger spherical object would create an unsafe condition, therefore, additional mid-rails may be necessary.

Where the employer has provided guardrails which meet the specifications above, it will be classified as de minimis.

Question 59: In 2003 the Occupational Safety and Health Administration (OSHA) audited several DOE laboratories and identified over 15,000 instances that OSHA could interpret as serious violations. (Currently, DOE is on pace to address all these instances by May 2006.) If the rule had been in place during these OSHA audits, what would be DOE's expectations for reporting into the NTS and for corrective actions?
Response: Contractors are always expected to implement hazard controls for identified noncompliances in order to protect their employees from uncontrolled hazards. It does not matter who identifies noncompliances. Those noncompliances that meet or exceed Worker Safety and Health NTS Reporting Thresholds should be reported into NTS.

Question 60: When the DOE identifies a violation, who submits the finding to the NTS, DOE or contractor?
Response: Contractors are expected to file NTS reports. In the rare event that a contractor refuses to submit a report, DOE can file the report

Question 61: What are the legal obligations for DOE employees, if they observe a noncompliance while touring a site?
Response: DOE employees have no stated legal obligations in 10 CFR 851.

Near Miss Occurrence Reporting: The draft guide criteria proposes using categories 1 through 4 for near misses. Occurrence Reporting Category 4 events do not require causal analyses, however, the Noncompliance Tracking System (NTS) system would. This essentially turns the Category 4 events into Category 3 events.

Question 62: What is the rationale for including Category 4 events, and what are DOE's expectations for Category 4 events entered into NTS?
Response: The 6-month Worker Safety and Health NTS trial reporting period gives the Office of Enforcement a time to experiment with reporting threshold levels. Near miss events are of special concern since a serious event could have occurred if circumstances were different. It is also possible that some category 4 ORPS near miss events could have alternatively be reported as category 3 near miss events. So, we are taking a closer look at reports in this category. The 6-month trial reporting period should enable the Office of Enforcement to determine whether the NTS reporting criteria can be adjusted.

NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

Question 63: What will the expectations be for providing all the documentation that is possible for an NTS entry? Will the labs need to recreate an NTS entry for issues identified during open reporting? What circumstances could require maintaining an NTS entry from the trial period?
Response: When enforcement begins, noncompliances that exist and meet or exceed NTS reporting thresholds should be reported into NTS. NTS reports filed during the trial reporting period should be carried forward if hazard controls have not been implemented prior to the beginning of enforcement.

Question 64: Will there be a 'dry run' period to 'test' the NTS system? How will the 'test' entries be handled by the DOE Office of Enforcement?
Response: When enforcement begins, noncompliances that exist and meet or exceed NTS reporting thresholds should be reported into NTS. NTS reports filed during the trial reporting period should be carried forward if hazard controls have not been implemented prior to the beginning of enforcement.

Question 65: Are occurrences prior to February 9, 2007 enforceable? If a hazard is created before February 9, 2007 but still exists after February 9, 2007, is that hazard/occurrence enforceable?
Response: When enforcement begins, noncompliances that exist and meet or exceed NTS reporting thresholds should be reported into NTS. NTS reports filed during the trial reporting period can be carried forward if hazard controls have not been implemented prior to the beginning of enforcement. Noncompliances that exist when enforcement begins are enforceable.

Question 66: Will the draft enforcement guide be available before June 1, 2006, when the NTS trial period begins? Will it be available prior to the May 11-12, 2006, Implementation meeting at ANL
Response: The Enforcement Program Plan was available on the internet on August 13, 2006. It can be accessed at: http://www.eh.doe.gov/enforce/programplan/EPP_August2006_masterv4.pdf

Question 67: It appears that the Office of Enforcement will be interacting with the EFCOG Las Vegas meeting during the April 24-28, 2006 meeting. Will there be a compilation of information and outputs from this working meeting that can be shared with the DOE complex?
Response: Information from the April EFCOG meeting in Las Vegas was compiled and shared during Program Office workshops and formed the initial basis to resolve 10 CFR 851 issues.

Near Miss Occurrence Reporting: The draft criteria proposes using categories 1 through 4 for near misses. Occurrence Reporting Category 4 events do not require causal analyses, however, the Noncompliance Tracking System (NTS) system would. This essentially turns the Category 4 events into Category 3 events.

Question 68: What is the rationale for including Category 4 events, and what are DOE's expectations for Category 4 events entered into NTS?
Response: See discussed above.

5. Self-Identification and Tracking Systems: *The regulation discusses use of internal tracking systems.*

Question 69: What are the expectations for contractors' internal tracking systems? What elements does DOE expect to see? What would DOE consider as deficiencies in an internal tracking system?
Response: Contractor internal tracking systems should: in some form annotate those noncompliances that are 851 noncompliances, enable retrieval of 851 noncompliances for review by DOE, be readily accessible by DOE Field and Program Office Coordinators, as well as Office of Enforcement staff when they are on-site, and enable contractor trending for potential reporting into the Noncompliance Tracking System.

Question 70: What is the best approach (or alternatively several good approaches) for maintaining an internal log of non-compliances? Labs may take different approaches to this log. Should it document every non-compliance? What about non-compliances that are corrected on the spot? Are multiple tracking systems expected? Who reviews the log to ensure the proper regulatory citation and the proper risk categorization (Severity Level)? What guidance can DOE provide to lead to a more consistent approach?
Response: 10 CFR 851, Appendix B establishes the definitions for Severity Levels I and II and de minimis noncompliances. Contractors most likely have existing systems for tracking issues/noncompliances. These systems probably differ from site to site - a contractor must do what works best for them. See the answer to the above question for general guidelines for internal tracking systems. Without regard for the severity level of a noncompliance, if a series of similar noncompliances were corrected on-the-spot and not documented, contractor management would not be aware of a programmatic or repetitive trend requiring management attention and reporting into NTS. For example, if a Severity Level I noncompliance that poses an imminent danger was corrected on-the-spot, it should be documented. On the other hand, a noncompliance that is correctly classified as de minimis, might not need to be documented.

7. Corrective Action to Prevent Recurrence: The regulation discusses evaluation of DOE contractor corrective actions.

Question 71: How are the corrective action and their completion viewed for different levels of hazards, and who sets the milestones?
Response: It is assumed that technically and economically feasible means are available to comply with the standards contained in 851. Each condition of noncompliance is unique and should be evaluated on its own merit. For example, if a fixed ladder is out of compliance with 29 CFR 1910.27, several alternative corrective actions might be feasible, depending on the circumstances. For instance, if the ladder is in disrepair, it may be prudent to tag and remove the ladder from service. On the other hand, a loose cage at the top of a fixed ladder may need to be welded. Frequency of use may be another factor to consider when deciding on abatement options. For example, if one employee uses the ladder once a month to access the roof for maintenance purposes, it may be safer and more efficient to access the roof by installing a fixed ladder. These examples illustrate only a few factors to be considered. There are many other factors that may need to be considered in determining appropriate abatement actions. Abatement plans should identify appropriate interim protective measures and a reasonable amount of time to implement corrective actions. An abatement plan would not be deemed acceptable if corrective actions can reasonably be implemented within three weeks, but the abatement plan identifies an abatement period of three years. In summary, since each situation is unique. Reasonable decisions must be made concerning corrective actions.

8. DOE's Contribution to a Violation: The regulation discusses circumstances in which a violation results from a direction from DOE.

Question 72: The penalty determination has dependency on the DOE's 'contribution to the violation.' Can you describe this in more detail?
Response: There may be circumstances in which a violation of a DOE worker safety and health requirement results from direction given by DOE to a DOE contractor. In such cases, DOE may refrain from issuing an NOV, or may mitigate any proposed penalty, provided the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 851.7, interpretative ruling of a requirement of 10 CFR 851 must be issued in accordance with the provisions of 851.7 to be binding.

Safety and Health Advisory

10 CFR 851 "Worker Safety and Health Program"

September 2006

PURPOSE OF THIS ADVISORY

This Advisory informs the Department of Energy (DOE) community that a new safety and health program has been established. This new Rule, 10 CFR 851, Worker Safety and Health Program will have a significant impact on operations at Department of Energy (DOE) facilities.

BACKGROUND

The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule. DOE published the Rule in the Federal Register on February 9, 2006. It establishes worker safety and health requirements that govern the conduct of contractor activities at non-nuclear, as well as nuclear, sites.

WHAT IS THE PURPOSE OF THE RULE?

The Rule requires that DOE contractor workers are provided with a workplace that is free from recognized hazards that can cause death or serious physical harm. To accomplish this objective, the Rule establishes management responsibilities, worker rights, safety and health standards, and required training. The Rule will replace the Contractor Requirements Document (CRD) of DOE O 440.1A "Worker Protection Management for DOE Federal and Contractor Employees."

WHO IS COVERED BY THE RULE?

DOE contractors and their workers are covered by the Rule. Contractors include parent corporations and subcontractors that have responsibilities for performing work at a DOE site in furtherance of a DOE mission.

WHAT IS REQUIRED OF DOE?

- Review and approve the contractor Worker Safety and Health Program (WSHP) by May 25, 2007.
- Oversee contractor performance of their WSHP.
- Approve closure facility hazard controls.

WHAT IS REQUIRED OF THE CONTRACTOR?

The contractor must provide DOE with a WSHP that describes the methods they will use to implement the requirements of the Rule. Contractors must:

- Submit a WSHP to DOE by February 26, 2007,
- Give labor organizations timely notice of development of the WSHP,
- Comply with all requirements by May 25, 2007, and.
- Identify closure facility hazards and controls within 90 days of identifying those hazards.

Contractors have additional responsibilities such as:

- Establishing written safety and health policy and goals,
- Providing mechanisms to involve workers in the safety and health program,
- Establishing procedures for workers to report hazards and stop work, and
- Using qualified safety and health professionals.

WHAT IS REQUIRED OF WORKERS?

Workers must comply with the safety and health requirements of the Rule. They also have certain rights such as:

- Having access to safety and health information,
- Observing monitoring of hazardous chemicals, and
- Receiving results of monitoring and inspections.

PENALTIES

Contractors that fail to comply with the Rule are subject to civil penalties up to $70,000.00 per violation or contract penalties.

ADDITIONAL SOURCES OF INFORMATION

- Your Safety and Health Office
- Information on the web:
  - o http://www.hss.energy.gov/healthsafety /WSHP/rule851/851final.html
- The Worker Safety and Health Poster
  - o http://www.hss.energy.gov/HealthSafety /WSHP/rule851/poster.pdf

For questions or additional information, call Office of Worker Safety and Health Policy: 301 903-6061

mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalty, Federal buildings and facilities, Incorporation by reference, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC, on January 20, 2006.

John Spitaleri Shaw,

Assistant Secretary for Environment, Safety and Health.

■ For the reasons set forth in the preamble, the Department of Energy is amending chapter III of title 10 of the Code of Federal Regulations as follows:

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 1. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

■ 2. Section 850.1 is revised to read as follows:

§ 850.1 Scope.

This part provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under part 851 of this chapter.

■ 3. Section 850.4 is revised to read as follows:

§ 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved CBDPP.

■ 4. A new part 851 is added to Chapter III to read as follows:

PART 851—WORKER SAFETY AND HEALTH PROGRAM

Subpart A—General Provisions

Subpart B—Program Requirements

Subpart C—Specific Program Requirements

Subpart D—Variances

Subpart E—Enforcement Process

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General Provisions

§ 851.1 Scope and purpose.

(a) The worker safety and health requirements in this part govern the conduct of contractor activities at DOE sites.

(b) This part establishes the:

(1) Requirements for a worker safety and health program that reduces or prevents occupational injuries, illnesses, and accidental losses by providing DOE contractors and their workers with safe and healthful workplaces at DOE sites; and

(2) Procedures for investigating whether a violation of a requirement of this part has occurred, for determining the nature and extent of any such violation, and for imposing an appropriate remedy.

§ 851.2 Exclusions.

(a) This part does not apply to work at a DOE site:

(1) Regulated by the Occupational Safety and Health Administration; or

(2) Operated under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 98–525, 42 U.S.C. 7158 note.

(b) This part does not apply to radiological hazards or nuclear explosives operations to the extent regulated by 10 CFR Parts 20, 820, 830 or 835.

(c) This part does not apply to transportation to or from a DOE site.

§ 851.3 Definitions.

(a) As used in this part:

AEA means the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

Affected worker means a worker who would be affected by the granting or denial of a variance, or any authorized representative of the worker, such as a collective bargaining agent.

Closure facility means a facility that is non-operational and is, or is expected to be permanently closed and/or demolished, or title to which is expected to be transferred to another entity for reuse.

Closure facility hazard means a facility-related condition within a closure facility involving deviations from the technical requirements of § 851.23 of this part that would require costly and extensive structural/engineering modifications to be in compliance.

Cognizant Secretarial Officer means, with respect to a particular situation, the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor, or any other official to whom the CSO delegates in writing a particular function under this part.

Compliance order means an order issued by the Secretary to a contractor that mandates a remedy, work stoppage, or other action to address a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part.

Consent order means any written document, signed by the Director and a contractor, containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

Construction means combination of erection, installation, assembly, demolition, or fabrication activities involved to create a new facility or to alter, add to, rehabilitate, dismantle, or remove an existing facility. It also includes the alteration and repair (including dredging, excavating, and painting) of buildings, structures, or other real property, as well as any construction, demolition, and excavation activities conducted as part of environmental restoration or remediation efforts.

Construction contractor means the lowest tiered contractor with primary responsibility for the execution of all construction work described within a construction procurement or authorization document (*e.g.*, construction contract, work order).

Construction manager means the individual or firm responsible to DOE for the supervision and administration of a construction project to ensure the construction contractor's compliance with construction project requirements.

Construction project means the full scope of activities required on a construction worksite to fulfill the requirements of the construction procurement or authorization document.

Construction worksite is the area within the limits necessary to perform the work described in the construction procurement or authorization document. It includes the facility being constructed or renovated along with all necessary staging and storage areas as well as adjacent areas subject to project hazards.

Contractor means any entity, including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission.

Covered workplace means a place at a DOE site where a contractor is responsible for performing work in furtherance of a DOE mission.

Director means a DOE Official to whom the Secretary assigns the authority to investigate the nature and extent of compliance with the requirements of this part.

DOE means the United States Department of Energy, including the National Nuclear Security Administration.

DOE Enforcement Officer means a DOE official to whom the Director assigns the authority to investigate the nature and extent of compliance with the requirements of this part.

DOE site means a DOE-owned or -leased area or location or other area or location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission.

Final notice of violation means a document that determines a contactor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty; and

(4) A statement explaining the reasoning behind any remedy.

Final Order means an order of DOE that represents final agency action and, if appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE.

Head of DOE Field Element means an individual who is the manager or head of the DOE operations office or field office.

Interpretative ruling means a statement by the General Counsel concerning the meaning or effect of a requirement of this part which relates to a specific factual situation but may also be a ruling of general applicability if the General Counsel determines such action to be appropriate.

National defense variance means relief from a safety and health standard, or portion thereof, to avoid serious impairment of a national defense mission.

NNSA means the National Nuclear Security Administration.

Nuclear explosive means an assembly containing fissionable and/or fusionable materials and main charge high-explosive parts or propellants capable of producing a nuclear detonation (*e.g.*, a nuclear weapon or test device).

Nuclear explosive operation means any activity involving a nuclear explosive, including activities in which main charge high-explosive parts and pit are collocated.

Occupational medicine provider means the designated site occupational medicine director (SOMD) or the individual providing medical services.

Permanent variance means relief from a safety and health standard, or portion thereof, to contractors who can prove that their methods, conditions, practices, operations, or processes provide workplaces that are as safe and healthful as those that follow the workplace safety and health standard required by this part.

Preliminary notice of violation means a document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for alleging the violation;

(3) Any remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

Pressure systems means all pressure vessels, and pressure sources including cryogenics, pneumatic, hydraulic, and vacuum. Vacuum systems should be considered pressure systems due to their potential for catastrophic failure due to backfill pressurization. Associated hardware (*e.g.*, gauges and regulators), fittings, piping, pumps, and pressure relief devices are also integral parts of the pressure system.

Remedy means any action (including, but not limited to, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or rescission of a contract) necessary or appropriate to rectify, prevent, or penalize a violation of a requirement of this part, including a compliance order issued by the Secretary pursuant to this part.

Safety and health standard means a standard that addresses a workplace hazard by establishing limits, requiring conditions, or prescribing the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful workplaces.

Secretary means the Secretary of Energy.

Temporary variance means a short-term relief for a new safety and health standard when the contractor cannot comply with the requirements by the prescribed date because the necessary construction or alteration of the facility cannot be completed in time or when technical personnel, materials, or equipment are temporarily unavailable.

Unauthorized discharge means the discharge of a firearm under circumstances other than: (1) during firearms training with the firearm properly pointed down range (or toward a target), or (2) the intentional firing at hostile parties when deadly force is authorized.

Under Secretary means, with respect to a particular situation, the DOE official who serves as the Under Secretary for Energy and Environment, or the Under Secretary for Science, or the Under Secretary for Nuclear Security/ Administrator for National Nuclear Security Administration who has primary line management responsibility for a contractor.

Variance means an exception to compliance with some part of a safety and health standard granted by the Under Secretary to a contractor.

Worker means an employee of a DOE contractor person who performs work in furtherance of a DOE mission at a covered workplace.

Workplace hazard means a physical, chemical, biological, or safety hazard with any potential to cause illness, injury, or death to a person.

(b) Terms undefined in this part that are defined in the Atomic Energy Act of 1954 must have the same meaning as under that Act.

§ 851.4 Compliance order.

(a) The Secretary may issue to any contractor a Compliance Order that:

(1) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part;

(2) Mandates a remedy, work stoppage, or other action; and,

(3) States the reasons for the remedy, work stoppage, or other action.

(b) A Compliance order is a final order that is effective immediately unless the Order specifies a different effective date.

(c) Within 15 calendar days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request does not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

(d) A copy of the Compliance Order must be prominently posted, once issued, at or near the location where the violation, potential violation, or inconsistency occurred until it is corrected.

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to $70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(b) A contractor that violates any requirement of this part may be subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's *Conditional Payment of Fee* clause, or other contract clause providing for such reductions.

(c) DOE may not penalize a contractor under both paragraphs (a) and (b) of this section for the same violation of a requirement of this part.

(d) For contractors listed in subsection d. of section 234A of the AEA, 42 U.S.C. 2282a(d), the total amount of civil penalties under paragraph (a) and contract penalties under paragraph (b) of this section may not exceed the total amount of fees paid by DOE to the contractor in that fiscal year.

(e) DOE shall not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

(f) DOE enforcement actions through civil penalties under paragraph (a) of this section, start on February 9, 2007.

§ 851.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Any person may file a petition for generally applicable rulemaking to amend or interpret provisions of this part.

(b) *How to file.* Any person who wants to file a petition for generally applicable rulemaking pursuant to this section must file by mail or messenger in an envelope addressed to the Office of General Counsel, GC–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Content of rulemaking petitions.* A petition under this section must:

(1) Be labeled ''Petition for Rulemaking Under 10 CFR 851;''

(2) Describe with particularity the provision of this part to be amended and the text of regulatory language to be added; and

(3) Explain why, if relevant, DOE should not choose to make policy by precedent through adjudication of petitions for assessment of civil penalty.

(d) *Determinations upon rulemaking petitions.* After considering the petition and other information DOE deems relevant, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought:

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy in a subject matter area that should be left to case-by-case determinations; or

(3) For other good cause.

§ 851.7 Requests for a binding interpretative ruling.

(a) *Right to file.* Any person subject to this part have the right to file a request for an interpretive ruling that is binding on DOE with regard to a question as to how the regulations in this part would apply to particular facts and circumstances.

(b) *How to file.* Any person who wants to file a request under this section must file by mail or messenger in an envelop addressed to the Office of General Counsel, GC–1, U.S. Department of

Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Content of request for interpretive ruling.* A request under this section must:

(1) Be in writing;

(2) Be labeled ''Request for Interpretive Ruling Under 10 CFR 851;''

(3) Identify the name, address, telephone number, e-mail address, and any designated representative of the person filing the request;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought; and

(7) Include explanatory discussion in support of the interpretive ruling being sought.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and provide an opportunity for public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity to any person who requests an interpretive ruling to respond to public comments relating to the request.

(f) *Other sources of information.* DOE may:

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings with addressing the same or a related issue.

(g) *Informal conference.* DOE may convene an informal conference with the person requesting the interpretive ruling.

(h) *Effect of interpretive ruling.* Except as provided in paragraph (i) of this section, an interpretive ruling under this section is binding on DOE only with respect to the person who requested the ruling.

(i) *Reliance on interpretive ruling.* If DOE issues an interpretive ruling under this section, then DOE may not subject the person who requested the ruling to an enforcement action for civil penalties for actions reasonably taken in reliance on the ruling, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified after opportunity to comment, judicially invalidated, or overruled by statute or regulation.

(j) *Denial of requests for an interpretive ruling.* DOE may deny a request for an interpretive ruling if DOE determines that:

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The interpretive question posed should be treated in a general notice of proposed rulemaking;

(3) There is an adequate procedure elsewhere in this part for addressing the interpretive question such as a petition for variance; or

(4) For other good cause.

(k) *Public availability of interpretive rulings.* For information of interested members of the public, DOE may file a copy of interpretive rulings on a DOE internet web site.

§ 851.8 Informal requests for information.

(a) Any person may informally request information under this section as to how to comply with the requirements of this part, instead of applying for a binding interpretive ruling under § 851.7. DOE responses to informal requests for information under this section are not binding on DOE and do not preclude enforcement actions under this part.

(b) Inquiries regarding the technical requirements of the standards required by this part must be directed to the Office of Environment, Safety and Health, Office of Health (EH–5), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) Information regarding the general statement of enforcement policy in the appendix to this part must be directed to the Office of Environment, Safety and Health, Office of Price-Anderson Enforcement (EH–6), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subpart B—Program Requirements

§ 851.10 General requirements.

(a) With respect to a covered workplace for which a contractor is responsible, the contractor must:

(1) Provide a place of employment that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers; and

(2) Ensure that work is performed in accordance with:

(i) All applicable requirements of this part; and

(ii) With the worker safety and health program for that workplace.

(b) The written worker safety and health program must describe how the contractor complies with the:

(1) Requirements set forth in Subpart C of this part that are applicable to the hazards associated with the contractor's scope of work; and

(2) Any compliance order issued by the Secretary pursuant to § 851.4.

§ 851.11 Development and approval of the worker safety and health program.

(a) *Preparation and submission of worker safety and health program.* By February 26, 2007, contractors must submit to the appropriate Head of DOE Field Element for approval a written worker safety and health program that provides the methods for implementing the requirements of Subpart C of this part.

(1) If a contractor is responsible for more than one covered workplace at a DOE site, the contractor must establish and maintain a single worker safety and health program for the covered workplaces for which the contractor is responsible.

(2) If more than one contractor is responsible for covered workplaces, each contractor must:

(i) Establish and maintain a worker safety and health program for the workplaces for which the contractor is responsible; and

(ii) Coordinate with the other contractors responsible for work at the covered workplaces to ensure that there are clear roles, responsibilities and procedures to ensure the safety and health of workers at multi-contractor workplaces.

(3) The worker safety and health program must describe how the contractor will:

(i) Comply with the requirements set forth in Subpart C of this part that are applicable to the covered workplace, including the methods for implementing those requirements; and

(ii) Integrate the requirements set forth in Subpart C of this part that are applicable to a covered workplace with other related site-specific worker protection activities and with the integrated safety management system.

(b) *DOE evaluation and approval.* The Head of DOE Field Element must complete a review and provide written approval of the contractor's worker safety and health program, within 90 days of receiving the document. The worker safety and health program and any updates are deemed approved 90 days after submission if they are not specifically approved or rejected by DOE earlier.

(1) Beginning May 25, 2007, no work may be performed at a covered workplace unless an approved worker safety and health program is in place for the workplace.

(2) Contractors must send a copy of the approved program to the Assistant Secretary for Environment, Safety and Health.

(3) Contractors must furnish a copy of the approved worker safety and health program, upon written request, to the affected workers or their designated representatives.

(c) *Updates.* (1) Contractors must submit an update of the worker safety and health program to the appropriate Head of DOE Field Element, for review and approval whenever a significant change or addition to the program is made, or a change in contractors occurs.

(2) Contractors must submit annually to DOE either an updated worker safety and health program for approval or a letter stating that no changes are necessary in the currently approved worker safety and health program.

(3) Contactors must incorporate in the worker safety and health program any changes, conditions, or workplace safety and health standards directed by DOE consistent with the requirements of this part and DEAR 970.5204–2, Laws, Regulations and DOE Directives (December, 2000) and associated contract clauses.

(d) *Labor Organizations.* If a contractor employs or supervises workers who are represented for collective bargaining by a labor organization, the contractor must:

(1) Give the labor organization timely notice of the development and implementation of the worker safety and health program and any updates thereto; and

(2) Upon timely request, bargain concerning implementation of this part, consistent with the Federal labor laws.

§ 851.12 Implementation.

(a) Contractors must implement the requirements of this part.

(b) Nothing in this part precludes a contractor from taking any additional protective action that is determined to be necessary to protect the safety and health of workers.

§ 851.13 Compliance.

(a) Contractors must achieve compliance with all the requirements of Subpart C of this part, and their approved worker safety and health program no later than May 25, 2007. Contractors may be required to comply contractually with the requirements of this rule before February 9, 2007.

(b) In the event a contractor has established a written safety and health program, an Integrated Safety Management System (ISMS) description pursuant to the DEAR Clause, or an approved Work Smart Standards (WSS) process before the date of issuance of the final rule, the Contractor may use that program, description, or process as the worker safety and health program required by this part if the appropriate Head of the DOE Field Element approves such use on the basis of written documentation provided by the contractor that identifies the specific portions of the program, description, or process, including any additional requirements or implementation methods to be added to the existing program, description, or process, that satisfy the requirements of this part and that provide a workplace as safe and healthful as would be provided by the requirements of this part.

(c) Nothing in this part shall be construed to limit or otherwise affect contractual obligations of a contractor to comply with contractual requirements that are not inconsistent with the requirements of this part.

Subpart C—Specific Program Requirements

§ 851.20 Management responsibilities and worker rights and responsibilities.

(a) *Management responsibilities.* Contractors are responsible for the safety and health of their workforce and must ensure that contractor management at a covered workplace:

(1) Establish written policy, goals, and objectives for the worker safety and health program;

(2) Use qualified worker safety and health staff (*e.g.*, a certified industrial hygienist, or safety professional) to direct and manage the program;

(3) Assign worker safety and health program responsibilities, evaluate personnel performance, and hold personnel accountable for worker safety and health performance;

(4) Provide mechanisms to involve workers and their elected representatives in the development of the worker safety and health program goals, objectives, and performance measures and in the identification and control of hazards in the workplace;

(5) Provide workers with access to information relevant to the worker safety and health program;

(6) Establish procedures for workers to report without reprisal job-related fatalities, injuries, illnesses, incidents, and hazards and make recommendations about appropriate ways to control those hazards;

(7) Provide for prompt response to such reports and recommendations;

(8) Provide for regular communication with workers about workplace safety and health matters;

(9) Establish procedures to permit workers to stop work or decline to perform an assigned task because of a reasonable belief that the task poses an imminent risk of death, serious physical harm, or other serious hazard to workers, in circumstances where the workers believe there is insufficient time to utilize normal hazard reporting and abatement procedures; and

(10) Inform workers of their rights and responsibility by appropriate means, including posting the DOE-designated Worker Protection Poster in the workplace where it is accessible to all workers.

(b) *Worker rights and responsibilities.* Workers must comply with the requirements of this part, including the worker safety and health program, which are applicable to their own actions and conduct. Workers at a covered workplace have the right, without reprisal, to:

(1) Participate in activities described in this section on official time;

(2) Have access to:

(i) DOE safety and health publications;

(ii) The worker safety and health program for the covered workplace;

(iii) The standards, controls, and procedures applicable to the covered workplace;

(iv) The safety and health poster that informs the worker of relevant rights and responsibilities;

(v) Limited information on any recordkeeping log (OSHA Form 300). Access is subject to Freedom of Information Act requirements and restrictions; and

(vi) The DOE Form 5484.3 (the DOE equivalent to OSHA Form 301) that contains the employee's name as the injured or ill worker;

(3) Be notified when monitoring results indicate the worker was overexposed to hazardous materials;

(4) Observe monitoring or measuring of hazardous agents and have the results of their own exposure monitoring;

(5) Have a representative authorized by employees accompany the Director or his authorized personnel during the physical inspection of the workplace for the purpose of aiding the inspection. When no authorized employee representative is available, the Director or his authorized representative must consult, as appropriate, with employees on matters of worker safety and health;

(6) Request and receive results of inspections and accident investigations;

(7) Express concerns related to worker safety and health;

(8) Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious physical harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures; and

(9) Stop work when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards; provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with procedures established in the approved worker safety and health program.

§ 851.21 Hazard identification and assessment.

(a) Contractors must establish procedures to identify existing and potential workplace hazards and assess the risk of associated workers injury and illness. Procedures must include methods to:

(1) Assess worker exposure to chemical, physical, biological, or safety workplace hazards through appropriate workplace monitoring;

(2) Document assessment for chemical, physical, biological, and safety workplace hazards using recognized exposure assessment and testing methodologies and using of accredited and certified laboratories;

(3) Record observations, testing and monitoring results;

(4) Analyze designs of new facilities and modifications to existing facilities and equipment for potential workplace hazards;

(5) Evaluate operations, procedures, and facilities to identify workplace hazards;

(6) Perform routine job activity-level hazard analyses;

(7) Review site safety and health experience information; and

(8) Consider interaction between workplace hazards and other hazards such as radiological hazards.

(b) Contractors must submit to the Head of DOE Field Element a list of closure facility hazards and the established controls within 90 days after identifying such hazards. The Head of DOE Field Element, with concurrence by the Cognizant Secretarial Officer, has 90 days to accept the closure facility hazard controls or direct additional actions to either:

(1) Achieve technical compliance; or

(2) Provide additional controls to protect the workers.

(c) Contractors must perform the activities identified in paragraph (a) of this section, initially to obtain baseline information and as often thereafter as necessary to ensure compliance with the requirements in this Subpart.

§ 851.22 Hazard prevention and abatement.

(a) Contractors must establish and implement a hazard prevention and abatement process to ensure that all identified and potential hazards are prevented or abated in a timely manner.

(1) For hazards identified either in the facility design or during the development of procedures, controls must be incorporated in the appropriate facility design or procedure.

(2) For existing hazards identified in the workplace, contractors must:

(i) Prioritize and implement abatement actions according to the risk to workers;

(ii) Implement interim protective measures pending final abatement; and

(iii) Protect workers from dangerous safety and health conditions;

(b) Contractors must select hazard controls based on the following hierarchy:

(1) Elimination or substitution of the hazards where feasible and appropriate;

(2) Engineering controls where feasible and appropriate;

(3) Work practices and administrative controls that limit worker exposures; and

(4) Personal protective equipment.

(c) Contractors must address hazards when selecting or purchasing equipment, products, and services.

§ 851.23 Safety and health standards.

(a) Contractors must comply with the following safety and health standards that are applicable to the hazards at their covered workplace:

(1) Title 10 Code of Federal Regulations (CFR) 850, ''Chronic Beryllium Disease Prevention Program.''

(2) Title 29 CFR, Parts 1904.4 through 1904.11, 1904.29 through 1904.33; 1904.44, and 1904.46, ''Recording and Reporting Occupational Injuries and Illnesses.''

(3) Title 29 CFR, Part 1910, ''Occupational Safety and Health Standards,'' excluding 29 CFR 1910.1096, ''Ionizing Radiation.''

(4) Title 29 CFR, Part 1915, ''Shipyard Employment.''

(5) Title 29 CFR, Part 1917, ''Marine Terminals.''

(6) Title 29 CFR, Part 1918, ''Safety and Health Regulations for Longshoring.''

(7) Title 29 CFR, Part 1926, ''Safety and Health Regulations for Construction.''

(8) Title 29 CFR, Part 1928, ''Occupational Safety and Health Standards for Agriculture.''

(9) American Conference of Governmental Industrial Hygienists (ACGIH), ''Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices,'' (2005) (incorporated by reference, see § 851.27) when the ACGIH Threshold Limit Values (TLVs) are lower (more protective) than permissible exposure limits in 29 CFR 1910. When the ACGIH TLVs are used as exposure limits, contractors must nonetheless comply with the other provisions of any applicable expanded health standard found in 29 CFR 1910.

(10) American National Standards Institute (ANSI) Z88.2, ''American National Standard for Respiratory Protection,'' (1992) (incorporated by reference, see § 851.27).

(11) ANSI Z136.1, ''Safe Use of Lasers,'' (2000) (incorporated by reference, see § 851.27).

(12) ANSI Z49.1, ''Safety in Welding, Cutting and Allied Processes,'' sections 4.3 and E4.3 (1999) (incorporated by reference, see § 851.27).

(13) National Fire Protection Association (NFPA) 70, ''National Electrical Code,'' (2005) (incorporated by reference, see § 851.27).

(14) NFPA 70E, ''Standard for Electrical Safety in the Workplace,'' (2004) (incorporated by reference, see § 851.27).

(b) Nothing in this part must be construed as relieving a contractor from complying with any additional specific safety and health requirement that it determines to be necessary to protect the safety and health of workers.

§ 851.24 Functional areas.

(a) Contractors must have a structured approach to their worker safety and health program which at a minimum, include provisions for the following applicable functional areas in their worker safety and health program: construction safety; fire protection; firearms safety; explosives safety; pressure safety; electrical safety; industrial hygiene; occupational medicine; biological safety; and motor vehicle safety.

(b) In implementing the structured approach required by paragraph (a) of this section, contractors must comply with the applicable standards and provisions in Appendix A of this part, entitled ''Worker Safety and Health Functional Areas.''

§ 851.25 Training and information.

(a) Contractors must develop and implement a worker safety and health training and information program to ensure that all workers exposed or potentially exposed to hazards are provided with the training and information on that hazard in order to perform their duties in a safe and healthful manner.

(b) The contractor must provide:

(1) Training and information for new workers, before or at the time of initial assignment to a job involving exposure to a hazard;

(2) Periodic training as often as necessary to ensure that workers are adequately trained and informed; and

(3) Additional training when safety and health information or a change in workplace conditions indicates that a new or increased hazard exists.

(c) Contractors must provide training and information to workers who have worker safety and health program responsibilities that is necessary for them to carry out those responsibilities.

§ 851.26 Recordkeeping and reporting.

(a) *Recordkeeping.* Contractors must:

(1) Establish and maintain complete and accurate records of all hazard inventory information, hazard assessments, exposure measurements, and exposure controls.

(2) Ensure that the work-related injuries and illnesses of its workers and subcontractor workers are recorded and reported accurately and consistent with DOE Manual 231.1–1A, Environment, Safety and Health Reporting Manual, September 9, 2004 (incorporated by reference, see § 851.27).

(3) Comply with the applicable occupational injury and illness recordkeeping and reporting workplace safety and health standards in § 851.23 at their site, unless otherwise directed in DOE Manual 231.1–1A.

(4) Not conceal nor destroy any information concerning non-compliance or potential noncompliance with the requirements of this part.

(b) *Reporting and investigation.* Contractors must:

(1) Report and investigate accidents, injuries and illness; and

(2) Analyze related data for trends and lessons learned (reference DOE Order 225.1A, Accident Investigations, November 26, 1997).

§ 851.27 Reference sources.

(a) *Materials incorporated by reference.* (1) *General.* The following standards which are not otherwise set forth in part 851 are incorporated by reference and made a part of part 851. The standards listed in this section have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) *Availability of standards.* The standards incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*

(ii) U.S. Department of Energy, Office of Environment, Safety and Health, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

(iii) American National Standards Institute Headquarters, 25 West 43rd Street, New York, NY 10036. Telephone number: 212–642–4980, or go to: *http://www.ansi.org.*

(iv) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169. Telephone: 617 770–3000, or go to: *http://www.nfpa.org.*

(v) American Conference of Governmental Industrial Hygienist (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240. Telephone number 513–742–2020, or go to: *http://www.acgih.org.*

(vi) American Society of Mechanical Engineers (ASME), P.O. Box 2300 Fairfield, NJ 07007. Telephone: 800–843–2763, or got to: *http://www.asme.org.*

(b) *List of standards incorporated by reference.* (1) American National Standards Institute (ANSI) Z88.2, ''American National Standard for Respiratory Protection,'' (1992).

(2) ANSI Z136.1, ''Safe Use of Lasers,'' (2000).

(3) ANSI Z49.1, ''Safety in Welding, Cutting and Allied Processes,'' sections 4.3 and E4.3, (1999).

(4) National Fire Protection Association (NFPA) 70, ''National Electrical Code,'' (2005).

(5) NFPA 70E, ''Standard for Electrical Safety in the Workplace,'' (2004).

(6) American Conference of Governmental Industrial Hygienists, ''Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices,'' (2005).

(7) American Society of Mechanical Engineers (ASME) Boilers and Pressure Vessel Code, sections I through XII including applicable Code Cases, (2004).

(8) ASME B31 (ASME Code for Pressure Piping) as follows:

(i) B31.1—2001—Power Piping, and B31.1a—2002—Addenda to ASME B31.1—2001;

(ii) B31.2—1968—Fuel Gas Piping;

(iii) B31.3—2002—Process Piping;

(iv) B31.4—2002—Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids;

(v) B31.5—2001—Refrigeration Piping and Heat Transfer Components, and B31.5a—2004, Addenda to ASME B31.5—2001;

(vi) B31.8—2003—Gas Transmission and Distribution Piping Systems;

(vii) B31.8S—2001—Managing System Integrity of Gas Pipelines;

(viii) B31.9—1996—Building Services Piping;

(ix) B31.11—2002—Slurry Transportation Piping Systems; and

(x) B31G—1991—Manual for Determining Remaining Strength of Corroded Pipelines.

(9) DOE Manual 231.1–1A, Environment, Safety and Health Reporting Manual, September 9, 2004.

(10) DOE Manual 440.1–1A, DOE Explosives Safety Manual, Contractor Requirements Document (Attachment 2), January 9, 2006.

Subpart D—Variances

§ 851.30 Consideration of variances.

(a) Variances shall be granted by the Under Secretary after considering the recommendation of the Assistant Secretary for Environment, Safety and Health. The authority to grant a variance cannot be delegated.

(b) The application must satisfy the requirements for applications specified in § 851.31.

§ 851.31 Variance process.

(a) *Application.* Contractors desiring a variance from a safety and health standard, or portion thereof, may submit a written application containing the information in paragraphs (c) and (d) of this section to the appropriate CSO.

(1) The CSO may forward the application to the Assistant Secretary for Environment, Safety and Health.

(2) If the CSO does not forward the application to the Assistant Secretary for Environment, Safety and Health, the CSO must return the application to the contractor with a written statement explaining why the application was not forwarded.

(3) Upon receipt of an application from a CSO, the Assistant Secretary for Environment, Safety and Health must review the application for a variance and make a written recommendation to:

(i) Approve the application;

(ii) Approve the application with conditions; or

(iii) Deny the application.

(b) *Defective applications.* If an application submitted pursuant to § 851.31(a) is determined by the Assistant Secretary for Environment, Safety and Health to be incomplete, the Assistant Secretary may:

(1) Return the application to the contractor with a written explanation of what information is needed to permit consideration of the application; or

(2) Request the contractor to provide necessary information.

(c) *Content.* All variance applications submitted pursuant to paragraph (a) of this section must include:

(1) The name and address of the contractor;

(2) The address of the DOE site or sites involved;

(3) A specification of the standard, or portion thereof, from which the contractor seeks a variance;

(4) A description of the steps that the contractor has taken to inform the affected workers of the application, which must include giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined at the place or places where notices to workers are normally posted; and

(5) A description of how affected workers have been informed of their right to petition the Assistant Secretary for Environment, Safety and Health or designee for a conference; and

(6) Any requests for a conference, as provided in § 851.34.

(d) *Types of variances.* Contractors may apply for the following types of variances:

(1) *Temporary variance.* Applications for a temporary variance pursuant to paragraph (a) of this section must be submitted at least 30 days before the effective date of a new safety and health standard and, in addition to the content required by paragraph (b) of this section, must include:

(i) A statement by the contractor explaining the contractor is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the factual basis and representations of qualified persons that support the contractor's statement;

(ii) A statement of the steps the contractor has taken and plans to take, with specific dates if appropriate, to protect workers against the hazard covered by the standard;

(iii) A statement of when the contractor expects to be able to comply with the standard and of what steps the contractor has taken and plans to take, with specific dates if appropriate, to come into compliance with the standard;

(iv) A statement of the facts the contractor would show to establish that:

(A) The contractor is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(B) The contractor is taking all available steps to safeguard the workers against the hazards covered by the standard; and

(C) The contractor has an effective program for coming into compliance with the standard as quickly as practicable.

(2) *Permanent variance.* An application submitted for a permanent variance pursuant to paragraph (a) of this section must, in addition to the content required in paragraph (b) of this section, include:

(i) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the contractor; and

(ii) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workers a place of employment which is as safe and healthful as would result from compliance with the standard from which a variance is sought.

(3) *National defense variance.* (i) An application submitted for a national defense variance pursuant to paragraph (a) of this section must, in addition to the content required in paragraph (b) of this section, include:

(A) A statement by the contractor showing that the variance sought is necessary to avoid serious impairment of national defense; and

(B) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workers a safe and healthful place of employment in a manner that, to the extent practical taking into account the national defense mission, is consistent with the standard from which a variance is sought.

(ii) A national defense variance may be granted for a maximum of six months, unless there is a showing that a longer period is essential to carrying out a national defense mission.

§ 851.32 Action on variance requests.

(a) *Procedures for an approval recommendation.* (1) If the Assistant Secretary for Environment, Safety and Health recommends approval of a variance application, the Assistant Secretary must forward to the Under Secretary the variance application and the approval recommendation including a discussion of the basis for the recommendation and any terms and conditions proposed for inclusion as part of the approval.

(2) If the Under Secretary approves a variance, the Under Secretary must notify the Assistant Secretary for Environment, Safety and Health who must notify the Office of Price-Anderson Enforcement and the CSO who must promptly notify the contractor.

(3) The notification must include a reference to the safety and health standard or portion thereof that is the subject of the application, a detailed description of the variance, the basis for the approval and any terms and conditions of the approval.

(4) If the Under Secretary denies a variance, the Under Secretary must notify the Assistant Secretary for Environment, Safety and Health who must notify the appropriate CSO who must notify the contractor.

(5) The notification must include the grounds for denial.

(b) *Approval criteria.* A variance may be granted if the variance:

(1) Is consistent with section 3173 of the NDAA;

(2) Does not present an undue risk to worker safety and health;

(3) Is warranted under the circumstances;

(4) Satisfies the requirements of § 851.31 of this part for the type of variance requested.

(c) *Procedures for a denial recommendation.* (1) If the Assistant Secretary for Environment, Safety and Health recommends denial of a variance application, the Assistant Secretary must notify the CSO of the denial recommendation and the grounds for the denial recommendation.

(2) Upon receipt of a denial recommendation, the CSO may:

(i) Notify the contractor that the variance application is denied on the grounds cited by the Assistant Secretary; or

(ii) Forward to the Under Secretary the variance application, the denial recommendation, the grounds for the denial recommendation, and any information that supports an action different than that recommended by the Assistant Secretary.

(3) If the CSO forwards the application to the Under Secretary, the procedures in paragraphs (a)(2), (3), (4) and (5) of this section apply.

(4) A denial of an application pursuant to this section shall be without prejudice to submitting of another application

(d) *Grounds for denial of a variance.* A variance may be denied if:

(1) Enforcement of the violation would be handled as a *de minimis* violation (defined as a deviation from the requirement of a standard that has no direct or immediate relationship to safety or health, and no enforcement action will be taken);

(2) When a variance is not necessary for the conditions, practice, means, methods, operations, or processes used or proposed to be used by contractor;

(3) Contractor does not demonstrate that the approval criteria are met.

§ 851.33 Terms and conditions.

A variance may contain appropriate terms and conditions including, but not limited to, provisions that:

(a) Limit its duration;

(b) Require alternative action;

(c) Require partial compliance; and

(d) Establish a schedule for full or partial compliance.

§ 851.34 Requests for conferences.

(a) Within the time allotted by a notice of the filling of an application, any affected contractor or worker may file with the Assistant Secretary for Environment, Safety and Health a request for a conference on the application for a variance.

(b) A request for a conference filed pursuant to paragraph (a) of this section must include:

(1) A concise statement explaining how the contractor or worker would be affected by the variance applied for, including relevant facts;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any other views or arguments on any issue of fact or law presented.

(c) The Assistant Secretary for Environment, Safety and Health, or designee, must respond to a request within fifteen days and, if the request is granted, indicate the time and place of the conference and the DOE participants in the conference.

Subpart E—Enforcement Process

§ 851.40 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection. DOE Enforcement Officers have the right to enter work areas without delay to the extent practicable, to conduct inspections under this subpart.

(b) Contractors must fully cooperate with the Director during all phases of the enforcement process and provide complete and accurate records and documentation as requested by the Director during investigation or inspection activities.

(c) Any worker or worker representative may request that the Director initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection must describe the subject matter or activity to be investigated or inspected as fully as possible and include supporting documentation and information. The worker or worker representative has the right to remain anonymous upon filing a request for an investigation or inspection.

(d) The Director must inform any contractor that is the subject of an investigation or inspection in writing at the initiation of the investigation or inspection and must inform the contractor of the general purpose of the investigation or inspection.

(e) DOE shall not disclose information or documents that are obtained during any investigation or inspection unless the Director directs or authorizes the public disclosure of the investigation. Prior to such authorization, DOE must determine that disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and part 1004 of this title. Once disclosed pursuant to the Director's authorization, the information or documents are a matter of public record.

(f) A request for confidential treatment of information for purposes of the Freedom of Information Act does not prevent disclosure by the Director if the Director determines disclosure to be in the public interest and otherwise permitted or required by law.

(g) During the course of an investigation or inspection, any contractor may submit any document, statement of facts, or memorandum of law for the purpose of explaining the contractor's position or furnish information which the contractor considers relevant to a matter or activity under investigation or inspection.

(h) The Director may convene an informal conference to discuss any situation that might be a violation of a requirement of this part, its significance and cause, any corrective action taken or not taken by the contractor, any mitigating or aggravating circumstances, and any other information. A conference is not normally open to the public and DOE does not make a transcript of the conference. The Director may compel a contractor to attend the conference.

(i) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the Director may close the investigation without prejudice.

(j) The Director may issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program; provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.41 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative thereto, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor is not required to admit in a consent order that a requirement of this part has been violated.

(3) DOE is not required to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts that form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.42 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation (PNOV) to the contractor.

(b) A PNOV must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular requirement involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The obligation of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the PNOV.

(c) A reply to a PNOV must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments that support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a

proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(d) If a contractor fails to submit a written reply within 30 calendar days of receipt of a PNOV:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

(e) A copy of the PNOV must be prominently posted, once final, at or near the location where the violation occurred until the violation is corrected.

§ 851.43 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation (PNOV), that presents a disagreement with any aspect of the PNOV and civil penalty, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.42:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.44 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.45 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;

(4) Preliminary notices of violations; and

(5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

Appendix A to Part 851—Worker Safety and Health Functional Areas

This appendix establishes the mandatory requirements for implementing the applicable functional areas required by § 851.24.

1. Construction Safety

(a) For each separately definable construction activity (e.g., excavations, foundations, structural steel, roofing) the construction contractor must:

(1) Prepare and have approved by the construction manager an activity hazard analysis prior to commencement of affected work. Such analyses must:

(i) Identify foreseeable hazards and planned protective measures;

(ii) Address further hazards revealed by supplemental site information (e.g., site characterization data, as-built drawings) provided by the construction manager;

(iii) Provide drawings and/or other documentation of protective measures for which applicable Occupational Safety and Health Administration (OSHA) standards require preparation by a Professional Engineer or other qualified professional, and

(iv) Identify competent persons required for workplace inspections of the construction activity, where required by OSHA standards.

(2) Ensure workers are aware of foreseeable hazards and the protective measures described within the activity analysis prior to beginning work on the affected activity.

(3) Require that workers acknowledge being informed of the hazards and protective measures associated with assigned work activities. Those workers failing to utilize appropriate protective measures must be subject to the construction contractor's disciplinary process.

(b) During periods of active construction (*i.e.,* excluding weekends, weather delays, or other periods of work inactivity), the construction contractor must have a designated representative on the construction worksite who is knowledgeable of the project's hazards and has full authority to act on behalf of the construction contractor. The contractor's designated representative must make frequent and regular inspections of the construction worksite to identify and correct any instances of noncompliance with project safety and health requirements.

(c) Workers must be instructed to report to the construction contractor's designated representative, hazards not previously identified or evaluated. If immediate corrective action is not possible or the hazard falls outside of project scope, the construction contractor must immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify the construction manager of the action taken. The contractor or the designated representative must stop work in the affected area until appropriate protective measures are established.

(d) The construction contractor must prepare a written construction project safety and health plan to implement the requirements of this section and obtain approval of the plan by the construction manager prior to commencement of any work covered by the plan. In the plan, the contractor must designate the individual(s) responsible for on-site implementation of the plan, specify qualifications for those individuals, and provide a list of those project activities for which subsequent hazard analyses are to be performed. The level of detail within the construction project safety and health plan should be commensurate with the size, complexity and risk level of the construction project. The content of this plan need not duplicate those provisions that were previously submitted and approved as required by § 851.11.

2. Fire Protection

(a) Contractors must implement a comprehensive fire safety and emergency response program to protect workers commensurate with the nature of the work that is performed. This includes appropriate facility and site-wide fire protection, fire alarm notification and egress features, and access to a fully staffed, trained, and equipped emergency response organization that is capable of responding in a timely and effective manner to site emergencies.

(b) An acceptable fire protection program must include those fire protection criteria and procedures, analyses, hardware and systems, apparatus and equipment, and personnel that would comprehensively ensure that the objective in paragraph 2(a) of this section is met. This includes meeting applicable building codes and National Fire Protection Association codes and standards.

3. Explosives Safety

(a) Contractors responsible for the use of explosive materials must establish and implement a comprehensive explosives safety program.

(b) Contractors must comply with the policy and requirements specified in the DOE Manual 440.1–1A, DOE Explosives Safety Manual, Contractor Requirements Document (Attachment 2), January 9, 2006

(incorporated by reference, see § 851.27). A Contractor may choose a successor version, if approved by DOE.

(c) Contractors must determine the applicability of the explosives safety directive requirements to research and development laboratory type operations consistent with the DOE level of protection criteria described in the explosives safety directive.

4. Pressure Safety

(a) Contractors must establish safety policies and procedures to ensure that pressure systems are designed, fabricated, tested, inspected, maintained, repaired, and operated by trained and qualified personnel in accordance with applicable and sound engineering principles.

(b) Contractors must ensure that all pressure vessels, boilers, air receivers, and supporting piping systems conform to:

(1) The applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (2004); sections I through section XII including applicable Code Cases (incorporated by reference, see § 851.27)

(2) The applicable ASME B31 (Code for Pressure Piping) standards as indicated below; and or as indicated in paragraph (b)(3) of this section:

(i) B31.1—2001—Power Piping, and B31.1a—2002—Addenda to ASME B31.1—2001 (incorporated by reference, see § 851.27);

(ii) B31.2—1968—Fuel Gas Piping (incorporated by reference, see § 851.27);

(iii) B31.3—2002—Process Piping (incorporated by reference, see § 851.27);

(iv) B31.4—2002—Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids (incorporated by reference, see § 851.27);

(v) B31.5—2001—Refrigeration Piping and Heat Transfer Components, and B31.5a—2004, Addenda to ASME B31.5—2001 (incorporated by reference, see § 851.27);

(vi) B31.8—2003—Gas Transmission and Distribution Piping Systems (incorporated by reference, see § 851.27);

(vii) B31.8S—2001—Managing System Integrity of Gas Pipelines (incorporated by reference, see § 851.27);

(viii) B31.9—1996—Building Services Piping (incorporated by reference, see § 851.27);

(ix) B31.11—2002—Slurry Transportation Piping Systems (incorporated by reference, see § 851.27); and

(x) B31G—1991—Manual for Determining Remaining Strength of Corroded Pipelines (incorporated by reference, see § 851.27).

(3) The strictest applicable state and local codes.

(c) When national consensus codes are not applicable (because of pressure range, vessel geometry, use of special materials, etc.), contractors must implement measures to provide equivalent protection and ensure a level of safety greater than or equal to the level of protection afforded by the ASME or applicable state or local code. Measures must include the following:

(1) Design drawings, sketches, and calculations must be reviewed and approved by a qualified independent design professional (*i.e.,* professional engineer). Documented organizational peer review is acceptable.

(2) Qualified personnel must be used to perform examinations and inspections of materials, in-process fabrications, non-destructive tests, and acceptance test.

(3) Documentation, traceability, and accountability must be maintained for each pressure vessel or system, including descriptions of design, pressure conditions, testing, inspection, operation, repair, and maintenance.

5. Firearms Safety

(a) A contractor engaged in DOE activities involving the use of firearms must establish firearms safety policies and procedures for security operations, and training to ensure proper accident prevention controls are in place.

(1) Written procedures must address firearms safety, engineering and administrative controls, as well as personal protective equipment requirements.

(2) As a minimum, procedures must be established for:

(i) Storage, handling, cleaning, inventory, and maintenance of firearms and associated ammunition;

(ii) Activities such as loading, unloading, and exchanging firearms. These procedures must address use of bullet containment devices and those techniques to be used when no bullet containment device is available;

(iii) Use and storage of pyrotechnics, explosives, and/or explosive projectiles;

(iv) Handling misfires, duds, and unauthorized discharges;

(v) Live fire training, qualification, and evaluation activities;

(vi) Training and exercises using engagement simulation systems;

(vii) Medical response at firearms training facilities; and

(viii) Use of firing ranges by personnel other than DOE or DOE contractor protective forces personnel.

(b) Contractors must ensure that personnel responsible for the direction and operation of the firearms safety program are professionally qualified and have sufficient time and authority to implement the procedures under this section.

(c) Contractors must ensure that firearms instructors and armorers have been certified by the Safeguards and Security National Training Center to conduct the level of activity provided. Personnel must not be allowed to conduct activities for which they have not been certified.

(d) Contractors must conduct formal appraisals assessing implementation of procedures, personnel responsibilities, and duty assignments to ensure overall policy objectives and performance criteria are being met by qualified personnel.

(e) Contractors must implement procedures related to firearms training, live fire range safety, qualification, and evaluation activities, including procedures requiring that:

(1) Personnel must successfully complete initial firearms safety training before being issued any firearms. Authorization to remain in armed status will continue only if the employee demonstrates the technical and practical knowledge of firearms safety semi-annually;

(2) Authorized armed personnel must demonstrate through documented limited scope performance tests both technical and practical knowledge of firearms handling and safety on a semi-annual basis;

(3) All firearms training lesson plans must incorporate safety for all aspects of firearms training task performance standards. The lesson plans must follow the standards set forth by the Safeguards and Security Central Training Academy's standard training programs;

(4) Firearms safety briefings must immediately precede training, qualifications, and evaluation activities involving live fire and/or engagement simulation systems;

(5) A safety analysis approved by the Head of DOE Field Element must be developed for the facilities and operation of each live fire range prior to implementation of any new training, qualification, or evaluation activity. Results of these analyses must be incorporated into procedures, lesson plans, exercise plans, and limited scope performance tests;

(6) Firing range safety procedures must be conspicuously posted at all range facilities; and

(7) Live fire ranges, approved by the Head of DOE Field Element, must be properly sited to protect personnel on the range, as well as personnel and property not associated with the range.

(f) Contractors must ensure that the transportation, handling, placarding, and storage of munitions conform to the applicable DOE requirements.

6. Industrial Hygiene

Contractors must implement a comprehensive industrial hygiene program that includes at least the following elements:

(a) Initial or baseline surveys and periodic resurveys and/or exposure monitoring as appropriate of all work areas or operations to identify and evaluate potential worker health risks;

(b) Coordination with planning and design personnel to anticipate and control health hazards that proposed facilities and operations would introduce;

(c) Coordination with cognizant occupational medical, environmental, health physics, and work planning professionals;

(d) Policies and procedures to mitigate the risk from identified and potential occupational carcinogens;

(e) Professionally and technically qualified industrial hygienists to manage and implement the industrial hygiene program; and

(f) Use of respiratory protection equipment tested under the DOE Respirator Acceptance Program for Supplied-air Suits (DOE-Technical Standard-1167–2003) when National Institute for Occupational Safety and Health-approved respiratory protection does not exist for DOE tasks that require such equipment. For security operations conducted in accordance with Presidential Decision Directive 39, U.S. POLICY ON

COUNTER TERRORISM, use of Department of Defense military type masks for respiratory protection by security personnel is acceptable.

7. Biological Safety

(a) Contractors must establish and implement a biological safety program that:

(1) Establishes an Institutional Biosafety Committee (IBC) or equivalent. The IBC must:

(i) Review any work with biological etiologic agents for compliance with applicable Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), World Health Organization (WHO), and other international, Federal, State, and local guidelines and assess the containment level, facilities, procedures, practices, and training and expertise of personnel; and

(ii) Review the site's security, safeguards, and emergency management plans and procedures to ensure they adequately consider work involving biological etiologic agents.

(2) Maintains an inventory and status of biological etiologic agents, and provide to the responsible field and area office, through the laboratory IBC (or its equivalent), an annual status report describing the status and inventory of biological etiologic agents and the biological safety program.

(3) Provides for submission to the appropriate Head of DOE Field Element, for review and concurrence before transmittal to the Centers for Disease Control and Prevention (CDC), each Laboratory Registration/Select Agent Program registration application package requesting registration of a laboratory facility for the purpose of transferring, receiving, or handling biological select agents.

(4) Provides for submission to the appropriate Head of DOE Field Element, a copy of each CDC Form EA–101, Transfer of Select Agents, upon initial submission of the Form EA–101 to a vendor or other supplier requesting or ordering a biological select agent for transfer, receipt, and handling in the registered facility. Submit to the appropriate Head of DOE Field Element the completed copy of the Form EA–101, documenting final disposition and/or destruction of the select agent, within 10 days of completion of the Form EA–101.

(5) Confirms that the site safeguards and security plans and emergency management programs address biological etiologic agents, with particular emphasis on biological select agents.

(6) Establishes an immunization policy for personnel working with biological etiologic agents based on the evaluation of risk and benefit of immunization.

(b) [Reserved]

8. Occupational Medicine

(a) Contractors must establish and provide comprehensive occupational medicine services to workers employed at a covered work place who:

(1) Work on a DOE site for more than 30 days in a 12-month period; or

(2) Are enrolled for any length of time in a medical or exposure monitoring program required by this rule and/or any other applicable Federal, State or local regulation, or other obligation.

(b) The occupational medicine services must be under the direction of a graduate of a school of medicine or osteopathy who is licensed for the practice of medicine in the state in which the site is located.

(c) Occupational medical physicians, occupational health nurses, physician's assistants, nurse practitioners, psychologists, employee assistance counselors, and other occupational health personnel providing occupational medicine services must be licensed, registered, or certified as required by Federal or State law where employed.

(d) Contractors must provide the occupational medicine providers access to hazard information by promoting its communication, coordination, and sharing among operating and environment, safety, and health protection organizations.

(1) Contractors must provide the occupational medicine providers with access to information on the following:

(i) Current information about actual or potential work-related site hazards (chemical, radiological, physical, biological, or ergonomic);

(ii) Employee job-task and hazard analysis information, including essential job functions;

(iii) Actual or potential work-site exposures of each employee; and

(iv) Personnel actions resulting in a change of job functions, hazards or exposures.

(2) Contractors must notify the occupational medicine providers when an employee has been absent because of an injury or illness for more than 5 consecutive workdays (or an equivalent time period for those individuals on an alternative work schedule);

(3) Contractors must provide the occupational medicine provider information on, and the opportunity to participate in, worker safety and health team meetings and committees;

(4) Contractors must provide occupational medicine providers access to the workplace for evaluation of job conditions and issues relating to workers' health.

(e) A designated occupational medicine provider must:

(1) Plan and implement the occupation medicine services; and

(2) Participate in worker protection teams to build and maintain necessary partnerships among workers, their representatives, managers, and safety and health protection specialists in establishing and maintaining a safe and healthful workplace.

(f) A record, containing any medical, health history, exposure history, and demographic data collected for the occupational medicine purposes, must be developed and maintained for each employee for whom medical services are provided. All occupational medical records must be maintained in accordance with Executive Order 13335, Incentives for the Use of Health Information Technology.

(1) Employee medical, psychological, and employee assistance program (EAP) records must be kept confidential, protected from unauthorized access, and stored under conditions that ensure their long-term preservation. Psychological records must be maintained separately from medical records and in the custody the designated psychologist in accordance with 10 CFR 712.38(b)(2).

(2) Access to these records must be provided in accordance with DOE regulations implementing the Privacy Act and the Energy Employees Occupational Illness Compensation Program Act.

(g) The occupational medicine services provider must determine the content of the worker health evaluations, which must be conducted under the direction of a licensed physician, in accordance with current sound and acceptable medical practices and all pertinent statutory and regulatory requirements, such as the Americans with Disabilities Act.

(1) Workers must be informed of the purpose and nature of the medical evaluations and tests offered by the occupational medicine provider.

(i) The purpose, nature and results of evaluations and tests must be clearly communicated verbally and in writing to each worker provided testing;

(ii) The communication must be documented in the worker's medical record; and (2) The following health evaluations must be conducted when determined necessary by the occupational medicine provider for the purpose of providing initial and continuing assessment of employee fitness for duty.

(i) At the time of employment entrance or transfer to a job with new functions and hazards, a medical placement evaluation of the individual's general health and physical and psychological capacity to perform work will establish a baseline record of physical condition and assure fitness for duty.

(ii) Periodic, hazard-based medical monitoring or qualification-based fitness for duty evaluations required by regulations and standards, or as recommended by the occupational medicine services provider, will be provided on the frequency required.

(iii) Diagnostic examinations will evaluate employee's injuries and illnesses to determine work-relatedness, the applicability of medical restrictions, and referral for definitive care, as appropriate.

(iv) After a work-related injury or illness or an absence due to any injury or illness lasting 5 or more consecutive workdays (or an equivalent time period for those individuals on an alternative work schedule), a return to work evaluation will determine the individual's physical and psychological capacity to perform work and return to duty.

(v) At the time of separation from employment, individuals shall be offered a general health evaluation to establish a record of physical condition.

(h) The occupational medicine provider must monitor ill and injured workers to facilitate their rehabilitation and safe return to work and to minimize lost time and its associated costs.

(1) The occupational medicine provider must place an individual under medical restrictions when health evaluations indicate that the worker should not perform certain job tasks. The occupational medicine

provider must notify the worker and contractor management when employee work restrictions are imposed or removed.

(i) Occupational medicine provider physician and medical staff must, on a timely basis, communicate results of health evaluations to management and safety and health protection specialists to facilitate the mitigation of worksite hazards.

(j) The occupational medicine provider must include measures to identify and manage the principal preventable causes of premature morbidity and mortality affecting worker health and productivity.

(1) The contractor must include programs to prevent and manage these causes of morbidity when evaluations demonstrate their cost effectiveness.

(2) Contractors must make available to the occupational medicine provider appropriate access to information from health, disability, and other insurance plans (de-identified as necessary) in order to facilitate this process.

(k) The occupational medicine services provider must review and approve the medical and behavioral aspects of employee counseling and health promotional programs, including the following types:

(1) Contractor-sponsored or contractor-supported EAPs;

(2) Contractor-sponsored or contractor-supported alcohol and other substance abuse rehabilitation programs; and

(3) Contractor-sponsored or contractor-supported wellness programs.

(4) The occupational medicine services provider must review the medical aspects of immunization programs, blood-borne pathogens programs, and bio-hazardous waste programs to evaluate their conformance to applicable guidelines.

(5) The occupational medicine services provider must develop and periodically review medical emergency response procedures included in site emergency and disaster preparedness plans. The medical emergency responses must be integrated with nearby community emergency and disaster plans.

9. Motor Vehicle Safety

(a) Contractors must implement a motor vehicle safety program to protect the safety and health of all drivers and passengers in Government-owned or -leased motor vehicles and powered industrial equipment (*i.e.*, fork trucks, tractors, platform lift trucks, and other similar specialized equipment powered by an electric motor or an internal combustion engine).

(b) The contractor must tailor the motor vehicle safety program to the individual DOE site or facility, based on an analysis of the needs of that particular site or facility.

(c) The motor vehicle safety program must address, as applicable to the contractor's operations:

(1) Minimum licensing requirements (including appropriate testing and medical qualification) for personnel operating motor vehicles and powered industrial equipment;

(2) Requirements for the use of seat belts and provision of other safety devices;

(3) Training for specialty vehicle operators;

(4) Requirements for motor vehicle maintenance and inspection;

(5) Uniform traffic and pedestrian control devices and road signs;

(6) On-site speed limits and other traffic rules;

(7) Awareness campaigns and incentive programs to encourage safe driving; and

(8) Enforcement provisions.

10. Electrical Safety

Contractors must implement a comprehensive electrical safety program appropriate for the activities at their site. This program must meet the applicable electrical safety codes and standards referenced in § 851.23.

11. Nanotechnology Safety—Reserved

The Department has chosen to reserve this section since policy and procedures for nanotechnology safety are currently being developed. Once these policies and procedures have been approved, the rule will be amended to include them through a rulemaking consistent with the Administrative Procedure Act.

12. Workplace Violence Prevention—Reserved

The Department has chosen to reserve this section since the policy and procedures for workplace violence prevention are currently being developed. Once these policies and procedures have been approved, the rule will be amended to include them through a rulemaking consistent with the Administrative Procedure Act.

Appendix B to Part 851—General Statement of Enforcement Policy

I. Introduction

(a) This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its worker safety and health regulations, and, in particular, exercise the civil penalty authority provided to DOE in section 3173 of Public Law 107–314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (December 2, 2002) (''NDAA''), amending the Atomic Energy Act (AEA) to add section 234C. The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price-Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the regulations in this part. It is not intended to establish a ''cookbook'' approach to the initiation and resolution of situations involving noncompliance with the regulations in this part. Rather, DOE intends to consider the particular facts of each noncompliance in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval Nuclear Propulsion, or otherwise excluded from the scope of the rule.

(b) The DOE goal in the compliance arena is to enhance and protect the safety and health of workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with the regulations in this part. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.

(c) In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by placing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of noncompliances. DOE will give due consideration to such initiatives and activities in exercising its enforcement discretion.

(d) DOE may modify or remit civil penalties in a manner consistent with the adjustment factors set forth in this policy with or without conditions. DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to DOE facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the safety and health of workers at DOE facilities by:

(a) Ensuring compliance by DOE contractors with the regulations in this part.

(b) Providing positive incentives for DOE contractors based on:

(1) Timely self-identification of worker safety noncompliances;

(2) Prompt and complete reporting of such noncompliances to DOE;

(3) Prompt correction of safety noncompliances in a manner that precludes recurrence; and

(4) Identification of modifications in practices or facilities that can improve worker safety and health.

(c) Deterring future violations of DOE requirements by a DOE contractor.

(d) Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

The Department of Energy Organization Act, 42 U.S.C. 7101–7385o, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911, and the Atomic Energy Act of 1954, as amended, (AEA) 42 U.S.C. 2011, require DOE to protect the public safety and health, as well as the safety and health of workers at DOE facilities, in conducting its activities, and grant DOE broad authority to achieve this goal. Section 234C of the AEA makes DOE contractors (and their subcontractors and suppliers thereto) covered by the DOE Price-Anderson indemnification system, subject to civil penalties for violations of the worker safety and health requirements promulgated in this part. 42 U.S.C. 2282c.

IV. Responsibilities

(a) The Director, as the principal enforcement officer of the DOE, has been delegated the authority to:

(1) Conduct enforcement inspections, investigations, and conferences;

(2) Issue Notices of Violations and proposed civil penalties, Enforcement Letters, Consent Orders, and subpoenas; and

(3) Issue orders to compel attendance and disclosure of information or documents obtained during an investigation or inspection. The Secretary issues Compliance Orders.

(b) The NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance; and

(3) Determines to disclose information or documents obtained during an investigation or inspection, PNOVs, Notices of Violations, and Final Notices of Violations. The NNSA Administrator acts after consideration of the Director's recommendation.

V. Procedural Framework

(a) Title 10 CFR part 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of an administrative appeal in the event a DOE contractor elects to petition the Office of Hearings and Appeals for review.

(b) Pursuant to 10 CFR part 851 subpart E, the Director initiates the enforcement process by initiating and conducting investigations and inspections and issuing a Preliminary Notice of Violation (PNOV) with or without a proposed civil penalty. The DOE contractor is required to respond in writing to the PNOV within 30 days, either: (1) Admitting the violation and waiving its right to contest the proposed civil penalty and paying it; (2) admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty; or (3) denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director may determine: (1) That no violation has occurred; (2) that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part; or (3) that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate, notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and proposed civil penalty.

(c) An opportunity to challenge an FNOV is provided in administrative appeal provisions. See 10 CFR 851.44. Any contractor that receives an FNOV may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, Subpart G, within 30 calendar days from receipt of the final notice. An administrative appeal proceeding is not initiated until the DOE contractor against which an FNOV has been issued requests an administrative hearing rather than waiving its right to contest the FNOV and proposed civil penalty, if any, and paying the civil penalty. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of the enforcement process or by consent order before or after any formal proceeding has begun.

VI. Severity of Violations

(a) Violations of the worker safety and health requirements in this part have varying degrees of safety and health significance. Therefore, the relative safety and health risk of each violation must be identified as the first step in the enforcement process. Violations of the worker safety and health requirements are categorized in two levels of severity to identify their relative seriousness. Notices of Violation issued for noncompliance when appropriate, propose civil penalties commensurate with the severity level of the violations involved.

(b) To assess the potential safety and health impact of a particular violation, DOE will categorize the potential severity of violations of worker safety and health requirements as follows:

(1) A Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment. A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $70,000.

(2) A Severity Level II violation is an other-than-serious violation. An other-than-serious violation occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health. A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($35,000).

(c) De minimis violations, defined as a deviation from the requirement of a standard that has no direct or immediate relationship to safety or health, will not be the subject of formal enforcement action through the issuance of a Notice of Violation.

VII. Enforcement Conferences

(a) The purpose of the enforcement conference is to:

(1) Assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based;

(2) Discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions;

(3) Determine whether there are any aggravating or mitigating circumstances; and

(4) Obtain other information which will help determine whether enforcement action is appropriate and, if so, the extent of that enforcement action.

(b) All enforcement conferences are convened at the discretion of the Director.

(c) The PNOV will normally be issued promptly, before the opportunity for an enforcement conference, following the inspection/investigation. In some cases an enforcement conference may be conducted onsite at the conclusion of an inspection/investigation.

(d) The contractor may request an enforcement conference if they believe additional information pertinent to the enforcement action could best be conveyed through a meeting.

(e) DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of worker safety and health, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Letter

(a) In cases where DOE has decided not to conduct an investigation or inspection or issue a Preliminary Notice of Violation (PNOV), DOE may send an Enforcement Letter, signed by the Director to the contractor. The Enforcement Letter is intended to communicate the basis of the decision not to pursue enforcement action for a noncompliance. The Enforcement Letter is intended to direct contractors to the desired level of worker safety and health performance. It may be used when DOE concludes that the specific noncompliance at issue is not of the level of significance warranted to conduct an investigation or inspection or for issuance of a PNOV. Even where a noncompliance may be significant, the Enforcement Letter may recognize that the contractor's actions may have attenuated the need for enforcement action. The Enforcement Letter will typically recognize how the contractor handled the circumstances surrounding the noncompliance, address additional areas requiring the contractor's attention, and address DOE's expectations for corrective action.

(b) In general, Enforcement Letters communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program. DOE might, for example, wish to recognize some action of the contractor that is of particular benefit to worker safety and health that is a candidate for emulation by other contractors. On the other hand, DOE may wish to bring a program shortcoming to the attention of the contractor that, but for the lack of worker safety and health significance of the immediate issue, might have resulted in the issuance of a PNOV. An Enforcement Letter is not an enforcement action.

(c) With respect to many noncompliances, an Enforcement Letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out its review simply through an annotation in the DOE Noncompliance Tracking System (NTS). A closeout of a noncompliance with or without an Enforcement Letter may only take place after DOE has confirmed that corrective actions have been completed.

IX. Enforcement Actions

(a) This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties.

(b) The nature and extent of the enforcement action is intended to reflect the seriousness of the violation. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation.

1. Notice of Violation

(a) A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of DOE and the basis to support the conclusion, that one or more violations of the worker safety and health requirements have occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

(b) DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in this section, the Notice of Violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, or if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances.

(c) DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with the worker safety and health requirements.

(d) DOE expects its contractors to have the proper management and supervisory systems in place to assure that all activities at covered workplaces, regardless of who performs them, are carried out in compliance with all the worker safety and health requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at covered workplaces. Accordingly, this policy should not be construed to excuse personnel errors.

(e) The limitations on remedies under section 234C will be implemented as follows:

(1) DOE may assess civil penalties of up to $70,000 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

(2) DOE may seek contract fee reductions through the contract's *Conditional Payment of Fee* Clause in the Department of Energy Acquisition Regulation (DEAR). *See* 10 CFR 851.4(b); 48 CFR parts 923, 952, 970. Policies for contract fee reductions are not established by this policy statement. The Director and appropriate contracting officers will coordinate their efforts in compliance with the statute. *See* 10 CFR 851.5(b).

(3) For the same violation of a worker safety and health requirement in this part, DOE may pursue either civil penalties (for indemnified contractors and their subcontractors and suppliers) or a contract fee reduction, but not both. *See* 10 CFR 851.5(c).

(4) A ceiling applies to civil penalties assessed on certain contractors specifically listed in 170d. of the Atomic Energy Act, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. For these contractors, the total amount of civil penalties and contract penalties in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year. *See* 10 CFR 851.5(d).

2. Civil Penalty

(a) A civil penalty is a monetary penalty that may be imposed for violations of requirements of this part. *See* 10 CFR 851.5(a). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting, and correction of violations of the worker safety and health requirements in this part.

(b) Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations.

(c) DOE will impose different base level penalties considering the severity level of the violation. Table A–1 shows the daily base civil penalties for the various categories of severity levels. However, as described below in section IX, paragraph b.3, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

(d) Enforcement personnel will use risk-based criteria to assist the Director in determining appropriate civil penalties for violations found during investigations and inspections.

(e) Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when the contractor asserts that it cannot pay the proposed penalty.

(f) DOE will review each case on its own merits and adjust the base civil penalty values upward or downward. As indicated below, Table A–1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be adjusted up or down based on the mitigating or aggravating factors described later in this section. In no instance will a civil penalty for any one violation exceed the statutory limit of $70,000 per day. In cases where the DOE contractor had knowledge of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, DOE will consider utilizing its per day civil penalty authority. Further, as described in this section, the duration of a violation will be taken into account in adjusting the base civil penalty.

TABLE A–1.—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percentage of maximum per violation per day)
I	100
II	50

3. Adjustment Factors

(a) DOE may reduce a penalty based on mitigating circumstances or increase a penalty based on aggravating circumstances. DOE's enforcement program is not an end in itself, but a means to achieve compliance with the worker safety and health requirements in this part. Civil penalties are intended to emphasize the importance of

compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of violations of the worker safety and health requirements in this part by the DOE contractors themselves rather than by DOE, and the prompt correction of any violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with the worker safety and health requirements in this part. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting, and prompt correction of conditions that may constitute, or lead to, violations of the worker safety and health requirements in this part, before, rather than after, DOE has identified such violations. Thus, DOE contractors should almost always be aware of worker safety and health noncompliances before they are discovered by DOE. Obviously, worker safety and health is enhanced if noncompliances are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a noncompliance until later, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of worker safety and health-related noncompliances by DOE contractors has the added benefit of allowing information that could prevent such noncompliances at other facilities in the DOE complex to be shared with other appropriate DOE contractors.

(b) Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting, and prompt correction of conditions which constitute, or could lead to, violations of the worker safety and health requirements. Thus, the civil penalty may be reduced for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

(c) On the other hand, ineffective programs for problem identification and correction are aggravating circumstances and may increase the penalty amount. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

(d) Further, in cases involving factors of willfulness, repeated violations, death, serious injury, patterns of systemic violations, DOE-identified flagrant violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

(e) Additionally, adjustment to the amount of civil penalty will be dependent, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent violations will be viewed differently from those in which there is gross negligence, deception, or willfulness. In addition to the severity of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of those involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee.

(f) Other factors that will be considered in determining the civil penalty amount are the duration of the violation (how long the condition has presented a potential exposure to workers), the extent of the condition (number of instances of the violation), the frequency of the exposure (how often workers are exposed), the proximity of the workers to the exposure, and the past history of similar violations.

(g) DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the penalty amount for a violation involving either a failure to make a required report or notification to the DOE or an untimely report or notification, will be based upon the circumstances surrounding the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was aware or should have been aware of the condition or event that it failed to report.

4. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table A–1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. Consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with the worker safety and health requirements are not taken.

5. Self-Identification and Tracking Systems

(a) DOE strongly encourages contractors to self-identify noncompliances with the worker safety and health requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance, DOE will normally allow a reduction in the amount of civil penalties, unless prior opportunities existed for contractors to identify the noncompliance. DOE will normally not allow a reduction in civil penalties for self-identification if significant DOE intervention was required to induce the contractor to report a noncompliance.

(b) Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

(c) DOE will use the voluntary Noncompliance Tracking System (NTS) which allows contractors to elect to report noncompliances. In the guidance document supporting the NTS, DOE will establish reporting thresholds for reporting noncompliances of potentially greater worker safety and health significance into the NTS. Contractors are expected, however, to use their own self-tracking systems to track noncompliances below the reporting threshold. This self-tracking is considered to be acceptable self-reporting as long as DOE has access to the contractor's system and the contractor's system notes the item as a noncompliance with a DOE safety and health requirement. For noncompliances that are below the NTS reportability thresholds, DOE will credit contractor self-tracking as representing self-reporting. If an item is not reported in NTS but only tracked in the contractor's system and DOE subsequently determines that the noncompliance was significantly mischaracterized, DOE will not credit the internal tracking as representing appropriate self-reporting.

6. Self-Disclosing Events

(a) DOE expects contractors to demonstrate acceptance of responsibility for worker safety and health by proactively identifying noncompliances. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally reduce civil penalties for self-identification, even if the underlying noncompliances were reported to DOE. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event, DOE will consider the ease with which a contractor could have discovered the noncompliance and the prior opportunities that existed to discover the noncompliance. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences to worker safety and health, such contractor actions do not constitute the type of proactive behavior necessary to prevent significant events from occurring and thereby to improve worker safety and health.

(b) The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Examples of events that provide opportunities to identify noncompliances include, but are not limited to:

(1) Prior notifications of potential problems such as those from DOE operational experience publications or vendor equipment deficiency reports;

(2) Normal surveillance, quality assurance performance assessments, and post-maintenance testing;

(3) Readily observable parameter trends; and

(4) Contractor employee or DOE observations of potential worker safety and health problems.

(c) Failure to utilize these types of events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

(d) Alternatively, if, following a self-disclosing event, DOE finds that the contractor's processes and procedures were adequate and the contractor's personnel generally behaved in a manner consistent with the contractor's processes and procedures, DOE could conclude that the contractor could not have been reasonably expected to find the single noncompliance that led to the event and thus, might allow a reduction in civil penalties.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root cause and prevent recurrence, may result in an increase or decrease in the base civil penalty shown in Table A–1. For example, appropriate corrective action may result in DOE's reducing the proposed civil penalty up to 50% from the base value shown in Table A–1. On the other hand, the civil penalty may be increased if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE worker safety and health requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, or may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 851.7, interpretative ruling of a requirement of this part must be issued in accordance with the provisions of 851.7 to be binding. Further, as discussed above in this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of noncompliances, DOE may exercise discretion as follows:

(a) In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation that meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it or the violation is identified by a DOE independent assessment, inspection or other formal program effort.

(2) The violation is not willful or is not a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions that caused it.

(b) DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

(c) In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance and any corrective actions can be properly tracked and monitored.

(d) If DOE initiates an enforcement action for a violation, and as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the severity of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the significance or character of the concern arising out of the initial violation.

(e) The preceding paragraphs are examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted.

X. Inaccurate and Incomplete Information

(a) A violation of the worker safety and health requirements to provide complete and accurate information to DOE, 10 CFR 851.40, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a DOE contractor normally will be categorized based on the guidance in section IX, ''Enforcement Actions.''

(b) DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE contractors concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as:

(1) The degree of knowledge that the communicator should have had regarding the matter in view of his or her position, training, and experience;

(2) The opportunity and time available prior to the communication to assure the accuracy or completeness of the information;

(3) The degree of intent or negligence, if any, involved;

(4) The formality of the communication;

(5) The reasonableness of DOE reliance on the information;

(6) The importance of the information that was wrong or not provided; and

(7) The reasonableness of the explanation for not providing complete and accurate information.

(c) Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE contractor. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE contractor or others on behalf of the DOE contractor, if a record was made of the oral information and provided to the DOE contractor thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE contractor and was not subsequently corrected in a timely manner.

(d) When a DOE contractor has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE contractor identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE contractor prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

(e) If the initial submission was accurate when made but later turns out to be

erroneous because of newly discovered information or advances in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was promptly corrected.

(f) The failure to correct inaccurate or incomplete information that the DOE contractor does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE contractor later determines that the initial submission was in error and does not promptly correct it or if there were clear opportunities to identify the error.

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HSS Office of Health, Safety and Security

Welcome to the Office of Worker Safety and Health Enforcement

Mission and Functions

Mission

The Office of Worker Safety and Health Enforcement implements the Department's congressionally mandated worker safety and health enforcement program in accordance with 10 CFR 851.

Functions

- Implements a worker safety and health enforcement program that includes processes and incentives for contractors to promptly identify, report, and correct safety issues and noncompliance.
- Evaluates the effectiveness of contractor programs in meeting DOE safety requirements and the self-regulatory criteria required for enforcement discretion by DOE.
- Investigates and resolves, through enforcement actions and civil penalties, significant contractor violations of DOE worker and safety requirements that do not warrant enforcement discretion.
- Works closely with DOE field and program elements, in coordination with the Offices of Health and Safety, Corporate Safety Analysis, and Independent Oversight, to implement the DOE worker safety and health enforcement program.
- Conducts and participates in various activities that facilitate improved contractor performance including conduct of DOE and contractor PAAA coordinator training and coordination with the Energy Facility Contractors Group (EFCOG) PAAA working group.
- Provides feedback and lessons learned on worker safety performance issues through the Enforcement Web Page and promulgation of additional enforcement guidance.

This page was last updated on October 16, 2007

10 CFR 851

Worker Safety and Health Enforcement

Program Overview

Office of Worker Safety and Health Enforcement (HS-41)

Office of Health, Safety and Security (HSS)

Office of Enforcement

- **Nuclear Safety**

  (10 CFR 820, 830, 835, 708)

- **Worker Safety and Health**

  (10 CFR 850, 851)

- **Classified Information Security**

  (10 CFR 824)

General Approach to Worker Safety and Health Enforcement

HSS
Office of Health, Safety and Security

- Outlined in Appendix B of 10 CFR 851
- Based on Existing Nuclear Safety Enforcement Approach
- Enforcement Provisions became effective on February 9, 2007

Enforcement Elements

Office of Health, Safety and Security

- **Provide incentives for timely identification, reporting, and correction of noncompliances by contractors**
  - **Noncompliance Tracking System (NTS)**
  - **Enforcement discretion**
  - **Mitigation**
- **Leverage existing assessment and inspection programs and processes**
- **DOE and contractor Enforcement Coordinator network provides critical points of contact**

Reporting Expectations

- **Noncompliance Meets or Exceeds Thresholds**
  - **Report to NTS**

- **Noncompliance Below Thresholds**
  - **"Report" to local or centralized tracking system**

Thresholds are available on the enforcement web site at

http://www.hss.energy.gov/Enforce/Part851NTSThresholds.pdf

NTS Reporting Thresholds

- **Noncompliances Associated with Occurrences**
- **Management Issue Noncompliances**
  - **Repetitive Noncompliances**
  - **Programmatic Issue**
  - **Intentional Violation or Misrepresentation**
- **Other Significant Conditions**
  - **Severity Level I violations with "high" relative risk**

Enforcement Process

- **Monitor sources of information for noncompliances**

  (occurrence reports, injury/illness reports, Noncompliance Tracking System (NTS), assessment/inspection reports)

- **Request additional data on a subset of noncompliances**

- **Decision to conduct investigation**

- **Document request**

- **Onsite investigation**

Enforcement Process (cont'd)

- Investigation Report
- Enforcement Conference
- Enforcement Outcome
- Appeal Process

Enforcement Options

- Enforcement Letter
- Consent Order
- Notice of Violation with Civil Penalty
- Notice of Violation without Civil Penalty
- Compliance Order
- Contract Fee Reduction in lieu of Civil Penalty

Severity Levels

- **Level I – Violations involving potential for death or serious physical harm**
- **Level II – Violations that cannot reasonably be predicted to cause death or serious harm but are directly related to worker health and safety**
- **De Minimus – Violations that have no direct or immediate relationship to safety and health; will not result in issuance of Notices of Violation**

Penalties

- Maximum of $70,000 per violation per day
- Severity Level I – 100% of maximum
- Severity Level II – 50% of maximum
- De Minimus – Will not result in issuance of a Notice of Violation
- Other isolated minor violations will not result in Notices of Violation

Incentives for Self-Reporting

Office of Health, Safety and Security

Application of Mitigation/Escalation Factors -

- **Prompt identification and reporting by contractor (up to 50% decrease)**
- **Timeliness and effectiveness of corrective actions (can decrease or increase up to 50%)**
- **Enforcement also has the authority to exercise discretion**

Workers Rights

- Any worker or worker representative can request that the Director of Enforcement initiate an investigation or inspection
- The worker/worker representative has the right to remain anonymous upon submitting a request
- Enforcement jurisdiction is limited to noncompliances with Federal regulations
- Office of Enforcement will evaluate requests for investigation in the same manner as any other source of information identifying a potential noncompliance

Enforcement Approach

- The majority of noncompliances do not result in formal investigations or enforcement actions – focus is on the most serious events/noncompliances

- Contractor violations of the "management responsibilities" and "worker rights" provisions of 10 CFR 851 are enforceable

- The Office of Enforcement will work closely with the DOE Headquarters and Field Employee Concerns Programs, the Office of Inspector General, and others to ensure that worker safety and health concerns are properly dispositioned

Additional Information

Office of Health, Safety and Security

Enforcement Home Page

http://www.hss.energy.gov/Enforce/

(copies of all enforcement actions are available through the home page)

Enforcement Process Overview

http://www.hss.energy.gov/Enforce/EPO_1207.pdf

Worker Safety and Health Enforcement
Observations and Lessons Learned

I. Executive Summary

The Office of Health, Safety and Security's Office of Enforcement conducted several projects during 2006 to assist Department of Energy line management and DOE contractors in implementing various elements of the Worker Safety and Health Program Final Rule, 10 CFR 851, which becomes effective on February 9, 2007. The first project was a series of prototype inspections at three DOE sites selected to represent a cross-section of DOE operations. While the reviewed contractors were found to have generally strong worker safety and health programs, the inspection team found multiple noncompliances that spanned the range of 851 requirements. These findings indicated that contractors need to further improve their programs for identifying and correcting deficiencies.

The second project was a six-month trial for reporting noncompliances into the Noncompliance Tracking System (NTS) using draft reporting thresholds. Contractor reporting was lower than anticipated, but was not out of character for a developing administrative function for a new program. Participating contractors gained experience in using the NTS system and also provided valuable feedback on adjustments to NTS reporting thresholds and report content.

These projects were intended to provide an opportunity for contractors to further develop and fine-tune their worker safety and health programs, incorporate relevant experience and help prepare for implementation of the rule. Specific lessons-learned identified in association with each of the initiatives are discussed in this report and in Appendixes A and B.

II. Projects

A. Prototype Inspections

Subpart E of 10 CFR 851, Enforcement Process, grants authority to the Director of the Office of Enforcement to conduct investigations and inspections as a means to evaluate contractor compliance with the Rule. While investigations are normally performed in response to significant events or conditions, inspections are conducted

in order to discover noncompliances that had not been previously identified or to identify inappropriate or ineffective interim protective measures or hazard controls. Inspections will typically be focused in nature, limited in scope and duration (not comprehensive), and give attention to one or more areas of concern, such as a physical area (building or facility), functional area (Industrial Hygiene, Construction Safety, etc.,) and/or a specific safety and health subject (fall protection, scaffolding, PPE, noise, etc.). Investigations and inspections will also involve a review of related program elements of the Rule.

In view of the authority to conduct investigations and inspections in Subpart E, the Office of Enforcement planned and conducted three prototype inspections. A National Nuclear Security Administration (NNSA) production facility, Office of Science (SC) laboratory facility and Office of Environmental Management (EM) construction site were selected since they represent a cross-section of DOE contractor operations. The sites offered diverse environments for a representative focused inspection.

Prototype inspections were conducted at Pantex and Oak Ridge National Laboratory (ORNL) in June and at Hanford's Waste Treatment Plant (WTP) in August, 2006. The inspections were conducted in potentially high hazard areas of the facilities and operations, as identified by the respective DOE site offices and contractors (Pantex Site Office and BWXT at Pantex; Office of River Protection and BNI at WTP; and ORO, ORNL Site Office and UT-Battelle at ORNL). In addition, the Office of Enforcement selected and investigated several incidents previously identified and reported by contractors into the Occurrence Reporting and Processing System (ORPS).

A typical, 2-to-3 day prototype inspection consisted of an opening conference, focused inspections (compliance with standards and program requirements of 851) at selected facilities, ORPS case reviews, special briefings and a closing conference. The prototype inspection team was composed of experienced safety and health professionals with expertise in construction safety, safety engineering, fire protection, explosives safety, industrial hygiene, and occupational medicine.

Results

Although the reviewed contractors were found to have generally strong worker safety and health programs, multiple 10 CFR 851 noncompliances were found at each site. In combining the results of all three sites, noncompliances spanned the range of 851 standard requirements, to include electrical safety, pressure system safety, walking/working surfaces, machine guarding, personal protective equipment, fixed and portable ladders, scaffolding, means of egress from trenches, hazardous materials, fire prevention and protection, emergency response, medical and first aid, and construction. As part of the prototype inspections, team members did not determine the severity and probability or the relative risk for each noncompliance. Sufficient detail, though, was provided to the contractors during the inspections that they were

able to understand the nature of identified noncompliances, identify suitable interim protective measures and determine appropriate corrective actions.

The number and significance of noncompliances identified by the team indicated contractor programs for identifying and correcting worker safety and health (WSH) deficiencies were not fully effective. The number and type of noncompliances detected by the inspection teams may indicate one or more of the following: (1) contractors were aware of noncompliances but were accepting the risks associated with uncontrolled hazards, (2) a fresh set of eyes may be needed to identify hazards that are present but aren't recognized by the contractor on a day-to-day basis, (3) assessment programs may not be fully effective, (4) subcontractor oversight is not effective, (5) inappropriate standards were being applied, (6) noncompliances were identified but either interim protective measures or corrective actions were not implemented; and (7) interim protective measures were used over the long-term in lieu of permanent hazard controls. Observations and comments compiled by the inspection team are contained in Appendix A.

B. Noncompliance Tracking System Six-Month Trial Period

The Office of Enforcement will use the Noncompliance Tracking System (NTS) as a mechanism to allow contractors to voluntarily report WSH noncompliances in the same manner contractors report nuclear safety noncompliances into NTS. Appendix B to Part 851, General Enforcement Policy, encourages contractors to self-identify, report and promptly correct worker safety and health noncompliances. Substantial incentives in the form of reduced civil penalties may be afforded DOE contractors for early identification and reporting.

In anticipation of WSH noncompliance reporting, the Office of Enforcement developed draft WSH reporting thresholds modeled, in part, after the nuclear safety thresholds. The WSH thresholds were posted on the web in early April 2006 for contractor use and evaluation. A similar version is currently listed in Appendix B of the Office's Enforcement Program Plan, also posted on the web.

In order to test the fairness and suitability of the WSH thresholds, a six-month, no-fault, trial period was conducted, allowing contractors to report noncompliances into the NTS system without being subject to investigation or enforcement action. The Office of Enforcement also intended to monitor the volume of reports to determine whether it was necessary to adjust the thresholds before the effective date of the rule.

Results

The six-month trial reporting period began on June 1, 2006 and ended on November 30, 2006. A total of 57 reports were submitted from 17 contractors at 15 sites. Report distribution was uneven throughout the six-month period with the highest number of reports submitted in October (17 reports). Although the Office of Enforcement was expecting that WSH noncompliance reporting would significantly

exceed nuclear noncompliance reporting, based on observed ratios of occupational safety versus nuclear events, NTS WSH reporting volume during the trial period was significantly lower than anticipated. Office of Enforcement independent review of ORPS occurrences during the period indicated that not all events with associated noncompliances meeting WSH reporting thresholds were reported into the NTS. Contractors offered the following reasons for this lower than anticipated trial reporting:

- Some contractors did not have the necessary infrastructure and procedures to initiate reporting.

- There was incomplete documentation or facts available to submit a report. Many contractors opted to file reports using preliminary data, in the absence of a formal causal analysis, sometimes citing only the rule's General Duty requirement in 10 CFR 851.10(a)(1).

- A number of contractors felt they would be violating their established NTS reporting procedures by reporting on a trial basis without performing the associated required formal causal analysis.

Statistical results and recommended system changes are contained in Appendix B.

Appendix A
Observations and Comments from Prototype Inspections

The following observations were made at one or more of the reviewed sites. Where appropriate, recommendations are also provided.

I. Worker Safety and Health Program Development

- Review of contractor gap analyses performed to determine the current level of 10 CFR 851 compliance indicated that not all 851 functional areas (e.g., Fire Protection, Emergency Response) were being evaluated.

- Contractors with identified gaps between their current level of compliance and that required by 10 CFR 851 were having difficulty determining the appropriate path forward. Specific options under consideration included: (1) plan to come into compliance by the effective date of the rule, (2) develop a long-range corrective action plan, (3) use equivalency or de minimis provisions where appropriate, or (4) request a variance.

- The level of employee involvement in the development of the WSH program and implementing procedures varied significantly across the reviewed contractors, ranging from little involvement to full integration of bargaining unit personnel in 10 CFR 851 development activities. Section 851.11 states that labor organizations must be given timely notice of the development and implementation of the WSH program; 851.20 also states that management must provide mechanisms to involve workers and their elected representatives in the development of the WSH program goals, objectives and performance measures.

II. Hazard Identification and Evaluation

- Examples were noted where 851 noncompliances were identified as "equivalencies," even though the applicable WSH standard did not contain an equivalency provision.

- The term "de minimis" was often misused to describe: (1) a low risk hazard, or (2) hazard controls that were not implemented in accordance with the hierarchy of controls. Consistent with the definition in 10 CFR 851, a de minimis condition would exist when a contractor complies with the clear intent of the standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health. These deviations may involve distance specifications, construction material requirements, use of incorrect color, minor variations from recordkeeping, testing, or inspection regulations, or the like.

- A wide range of safety and health assessment mechanisms were found to be in use at the reviewed sites. These included worker observations, weekly supervisor walkthroughs, find-and-fix teams, management assessments and independent (outside) assessments. While each site had an assessment program, overall assessment strategies

could be strengthened, as not each program was fully effective. At one site it did not appear that management was fully committed to assessment by all levels of the organization and from outside the organization. At another site personnel conducting assessments were not trained in assessment techniques and in specific safety and health areas that were subject to evaluation. At yet another site, assessments did not uncover valid program and standards-based noncompliances, but instead identified generic, non-specific observations. At two of the sites, contractors did not have methodologies for ensuring the consistent performance of root cause analyses and extent of condition reviews for conditions of noncompliance and for verifying that corrective actions were implemented.

- Two of the reviewed sites did not collect information on noncompliances that were immediately corrected by workers who found them. Regardless of the severity level, when noncompliances were corrected on-the-spot and information was not captured, important local tracking and trending information was not available.

- At two of the sites, WSH noncompliance and deficiency observations were contained on multiple tracking systems that were not integrated across the sites. Consequently, site-wide trending or analysis of safety and health noncompliance data was difficult to perform.

- A large number of reviewed ORPS reports involved subcontractors. In addition, many subcontractor noncompliances were identified during the inspections. Therefore, close monitoring of second and third-tier subcontractors is important.

- Examples were noted in which site facilities had been initially classified as temporary by a construction contractor and had subsequently been evaluated using 29 CFR 1926, since construction standards accommodate temporary facilities. It was observed, however, that some of these facilities had already been and will continue to be in use for a long period of time. The Office of Enforcement will consider these facilities permanent and evaluate them using 29 CFR 1910.

- Some contractor employees were discouraged from reporting injuries and illnesses in order to achieve company injury/illness statistics goals.

- While noteworthy job planning practices were observed at all three sites, specific deficiencies were noted that emphasize the need for effective planning for every work activity, including routine work, experiments, and subcontractor work.
  - Insufficient planning for electrical safety led to significant near misses at two of the reviewed sites. Contractors did not consider electrical safety when wall or ceiling penetrations were performed in close proximity to energized electrical conductors.
  - In at least one division at one site, work planning was done in serial fashion and all appropriate personnel (including safety and health professionals*)* were not involved in the planning process. Decision-making is more effective when groups of responsible people, including safety and health professionals, plan together.

- ORPS-related events at two sites involved subcontractors who performed work in an unsafe manner in the general vicinity of other contractors with minimal or no oversight by the prime contractor. On multi-employer worksites, coordination among contractors is paramount to ensure clear roles and responsibilities.
- Contractors at two sites were involved in near misses that could have been avoided if they had learned from similar events that occurred at other DOE sites through an effective lessons learned program.
- At one site, Job Hazard Analyses (JHA) were not available for all work activities or for work considered "skill of the craft." This can lead to complacency for tenured crafts people. For less experienced personnel, this practice may not disclose the full range of hazards associated with their work.
- At one site, employees stated that work instructions were more effective when they referenced mandatory training qualifications, were located at work stations and were more closely linked to JHAs and procedures.
- Based on interviews with employees at all three sites, behavior-based safety initiatives and DOE Voluntary Protection Program initiatives were raising safety awareness and effectiveness.

III. <u>Fire Protection</u> The team reviewed a number of the contractor's fire protection program source documents, performed representative facility tours, and interviewed cognizant personnel, including facility workers and fire safety subject matter experts. This included an audit of the degree that facilities complied with relevant National Fire Protection Association (NFPA) standards, such as the Life Safety Code (NFPA 101). The following items were noted:

- A significant number of (currently) uncorrected violations of NFPA codes and standards were identified. A number are subject to pending DOE approval under exemption and equivalency processes established by DOE Orders. Others would require significant building modifications that appear to be outside the scope of the responsibilities and financial resources of contractor maintenance organizations. Consequently, it is unlikely that they will be corrected in advance of the effective date of the rule. The contractor had not yet determined a path forward.

- In an effort to more efficiently manage contractor safety programs, the team found that prioritized inspection, testing and corrective maintenance (IT&M) programs were instituted. This resulted in a principal emphasis on systems within "nuclear" facilities with a lesser emphasis on the IT&M of fire protection systems in "non-nuclear" facilities. Consequently, the requirements of NFPA codes and standards (principally NFPA 25 and 72) were not always met. Significant IT&M backlogs were noted.

IV. <u>Emergency Response</u> Appendix A to Part 851 establishes the requirement for contractors to have access to "a fully staffed, trained and equipped emergency response organization that is capable of responding in a timely and effective manner to site emergencies." At one of the sites the inspection scope included a review of the contractor's emergency response organization. The team reviewed various forms of

documentation related to contractor fire department operations, conducted interviews with emergency responders and other personnel, and performed a limited scope review of site conditions, apparatus, and equipment. This included a partial review of the degree to which contractor fire departments conformed to applicable industry standards, such as NFPA Standards 1500 and 1710, among others. The following issue was noted during this review.

Within the spectrum of applicable NFPA criteria are a number of requirements that materially affect the lives of workers when these workers are involved in a medical emergency, such as would be the case with a cardiac arrest, serious accident, or similar event. One such requirement pertains to the response time to deliver (emergency) service (Section 5.3.3.4, NFPA 1710/Appendix A. 2. of 10 CFR Part 851). Remote work locations existed at one of the reviewed sites where it appears that the contractor fire departments may not literally comply with these service delivery requirements. No fire safety equivalency or exemption had been previously approved by DOE for this condition. For emergency medical response to remote locations, an equivalent level of safety may be attained through the provision of automatic external defibrillators and "first aid" equipment, coupled with appropriate training of workers, and an effective means of communications equipment, among other possible alternative options. It was unclear how contractors intend to mitigate this condition.

V. **Occupational Medicine** Not all sites were fully compliant with Occupational Medicine (Occ Med) requirements of the rule. Numerous deficiencies were noted with contractor implementation of the Occupational Medicine requirements of the rule. Specific deficiencies included:

- There were difficulties in tracking workers who came onto the site for short-duration projects or sporadically over time.

- Recordkeeping for transient workers was difficult, especially for construction projects where the number of crafts and associated workers were in a state of flux.

- Contracting Officers have not always stipulated Occ Med requirements for subcontractors.

- Other concerns that shaped existing Occ Med programs include:
  - Access to medications and medical problems of employees
  - Pre-hire physical exams and drug and alcohol screening

- Trauma-type clinics for temporary facilities did not meet the requirements of 851.

- Medical capabilities had not been evaluated for a full range of accident scenarios.

- The contractor at one site had not evaluated/assessed the health promotion program to ensure that the Occ Med doctor walks the site to observe working conditions and that there is a systematic collection and analysis of health data.

- The contractor at one site had not evaluated their pandemic preparedness for infectious diseases like the Avian Influenza.

Appendix B
Observations and Comments on Worker Safety and Health
Noncompliance Tracking System Reporting Thresholds

The following observations and comments were identified as part of the six-month Noncompliance Tracking System (NTS) trial reporting period:

I. Statistical Analysis of Submitted Reports

Fifty-seven NTS reports were submitted during the trial reporting period with the following breakdown:

- Eighteen reports involved construction, while 39 cases involved general industry standards.

- Three reports identified both WSH and Nuclear noncompliances.

- Four health-related cases were reported. These included exposure to crystalline silica and beryllium.

- Corrective actions were completed during the trial period for 9 of the reports submitted.

- Distribution of cases according to WSH NTS thresholds was as follows:
  - Programmatic Issue – 9
  - Occupational Illnesses and Injuries (ORPS Group 2(A))- 9
  - Hazardous Energy Control (ORPS Group 2(C)) – 19
  - Near Miss (ORPS Group 10(3)) – 17
  - Other Significant Conditions – 1
  - Management Concerns/Issues (ORPS Group 10(2)) - 2

- 82 percent of the NTS reports were disclosed by an event, as indicated by an associated ORPS report.

II. NTS Report Volume and Content

Office of Enforcement review of the submitted WSH NTS reports identified the following observations related to report content and categorization:

- NTS report content was generally found to be good. Most narratives/noncompliance descriptions provided sufficient detail for a reviewer to understand the problem and its safety significance. Since most reports also provided a link to one or more ORPS cases, a reviewer was able to collect additional information, including the group and significance category associated with the ORPS event. However, several of the 57 NTS

reports did not reference an ORPS report and the narrative had insufficient documentation for a reviewer to get a clear picture of the facts.

- Normally, contractors were not expected to submit WSH NTS reports involving a broken foot or fractured arm where a specific WSH standard was not identified. However, such instances should not have discouraged contractors from identifying 10 CFR 851 programmatic requirements if necessary, such as hazard identification and assessment.

- An estimated 25% of the WSH NTS reports merited collection of additional information for further evaluation of the circumstances presented in the report. Information captured in the "Worker Safety and Health Information" section of the report, categorization of the event, and the severity and consequence of the hazards indicated that additional information was needed.

- In several instances, standards were incorrectly cited. This was most likely due to a lack of familiarity with safety and health standards and/or uncertainty about the type of operation, industry (e.g., general industry vs. construction) or contractor trade associated with the noncompliance.

Based on review of submitted reports it appears that the definition and appropriate use of the General Duty requirement (10 CFR 851.10(a)(1)) was not widely understood. It is important to note that the application of the General Duty requirement must satisfy the following criteria:

– No existing 10 CFR 851 (a)(1) standard covers the hazard. An American National Standards Institute (ANSI) Standard or any other consensus standard, including a manufacturer's manual, can be use to substantiate a violation.
– The condition presents a hazard to which workers were exposed.
– The hazard is a recognizable hazard by the industry.
– The hazard is classified as serious, Severity Level I.
– Feasible and useful methods exist to correct the hazard.

III. Contractor Comments

The Office of Enforcement received a number of comments related to the proposed reporting thresholds and the WSH NTS reporting format during the trial reporting period. Significant comments are highlighted below.

A. WSH Reporting Thresholds

- Commenters questioned the inclusion of lower significance category events (especially significance category 4 in the near-miss category) in the ORPS related thresholds.

- One commenter proposed the inclusion of ORPS category 10(2) – Management Concern as part of the ORPS related thresholds.

- Several commenters expressed concern about the decision-process for identifying and categorizing programmatic WSH noncompliances for purposes of NTS reporting.

- Commenters expressed concern about the volume of root cause analyses associated with the anticipated numbers of WSH NTS reports.

The Office of Enforcement is evaluating the above comments and the reports received during the trial reporting period to determine whether revisions are needed to the proposed WSH reporting thresholds. Any revisions to the thresholds will be made during the next revision to the Enforcement Program Plan. With respect to categorization of programmatic noncompliances, the Office of Enforcement recognizes this is a somewhat subjective decision and has prompted similar questions related to nuclear safety noncompliance reporting. The Office of Enforcement has provided guidance in the Enforcement Program Plan and will continue to expand or elaborate on that guidance as appropriate through further revisions to the Enforcement Program Plan, through the PAAA Coordinators Training Workshops, and through routine communications with the contractor community. With respect to the volume of root cause analyses, the Office of Enforcement view is that a graded causal analysis approach appears appropriate and the office is currently evaluating the draft matrix prepared by the Energy Facility Contractors Group Price-Anderson Amendments Act Working Group.

B. NTS Reporting Form and Format

Specific recommended changes to the NTS Reporting Form suggested by commenters included the following:

- Add a pull down to identify the primary and secondary originating threshold(s), e.g., Programmatic Issue, Repetitive, Near Miss, Hazardous Energy Control, etc.

- Provide separate entries for PAAA and WSH Determination Dates to account for nuclear safety and WSH.

- Revise CFR citations to ensure accompanying descriptions are technically accurate and can be cited as “stand alone paragraphs.”

- Incorporate text for some CFR citations such as 10 CFR 850, Chronic Beryllium Disease Prevention Program.

- Some commenters stated that the descriptions provided in the NTS User Guidance Manual for a number of elements in the “Worker Safety and Health Information” section of the report were not clear.

- Several contractors questioned the benefit of including worker safety and health fields that seem to request information similar to other sections in the NTS Report, such as “Corrective Action Description/Target Date Change Justification.”

The Office of Enforcement is taking the above comments into consideration and has already initiated work on some of the suggested changes. For example, descriptions in the NTS Users Guide are being updated. The Office of Enforcement anticipates additional issues will be identified during the transition to full reporting and we will continue to make improvements/upgrades to the NTS reporting system on a priority basis during the coming year.

10 CFR Part 851 NTS Reporting Thresholds (revised 2/6/2007)

Table B-1 – Noncompliances[1] Associated with Occurrences (DOE Manual 231.1-2) - (Use the specific criteria in the DOE Manual for the reporting thresholds)

Reporting Criteria Group	Subgroup	Occurrence Category and Summary Description[2]
2. Personnel Safety and Health	A. Occupational Illnesses/Injuries	(1) Fatality/terminal illness (2) Inpatient hospitalization of ≥ 3 personnel (3) ≥ 3 personnel having DART cases (4) Personnel exposure > limits requiring medical treatment (5) Personnel exposure > limits (6) Serious occupational injury
	B. Fires/Explosions	(1) Unplanned fire/explosion within primary confinement/containment (2) Unplanned fire/explosion in a nuclear facility that activates a fire suppression system (3) Unplanned fire/explosion in a non-nuclear facility
	C. Hazardous Energy Control	(1) Process failure resulting in burn, shock (2) Process failure/discovery of uncontrolled energy source
10. Management Concerns/Issues	N/A	(3) Near miss (Significance Categories 1 through 3)

The simple occurrence of an event in any of the listed categories is not enough to warrant NTS reporting. Reportable noncompliances require the identification of a 10 CFR Part 851 noncompliance (e.g., 29 CFR Parts 1910 and 1926) in conjunction with the event. The Office of Enforcement is interested only in those portions of the criteria with direct worker safety and health implications. Contractors identifying a significant worker safety and health noncompliance in association with an event type or category not listed on the table should evaluate the event for NTS reportability.

Table B-2 - Other NTS Reportable Conditions

Management Issues Noncompliances[3]
Repetitive Noncompliances
Programmatic Issue
Intentional Violation or Misrepresentation
Other Significant Conditions
Conditions meeting the criteria of Severity Level I (serious) violations and high relative risk[4]

Notes to Tables

1 Noncompliances with 10 CFR Part 851.

2 These summary descriptions are a brief characterization of the related criteria. Use the full statement of the criteria contained in Manual 231.1-2 to establish NTS reportability of event-related occupational safety and health noncompliances.

3 Refer to chapter IV of the Enforcement Process Overview for a description of these types of noncompliances.

4 Conditions of noncompliance identified by any method or means (e.g., contractor assessments, internal review processes, external assessments, employee concerns, event evaluation) that would not otherwise be reported into NTS as either a Management Issue or Occurrence, but that represent a condition of high relative risk. Conditions with an associated low or medium relative risk should not be reported. Guidance on risk assessment criteria can be found at http://www.eh.doe.gov/health/rule851/851final.html , clicking on the Implementation Guide link.

NIEHS
National Institute of
Environmental Health Sciences

10 CFR 851 Worker Safety and Health Program Rule

What It Is and What You Need to Know

What is 10 CFR 851?

DOE recently issued a new worker safety and health program rule. The rule sets worker safety and health requirements that govern the conduct of contractor activities at DOE sites. The rule codifies and largely incorporates DOE Order 440.1A.

Under the rule, contractors must:

» provide a place of employment free from recognized hazards that cause or have the potential to cause death or serious physical harm to workers, and

» ensure that work is performed in accordance with all applicable requirements and with the worker safety and health program for that workplace.

What Does 10 CFR 851 Do?

The Worker Safety and Health Program Rule:

- ***Applies to both contractors and subcontractors*** – Under the new rule, contractors and subcontractors are treated equally.
- ***Incorporates many health and safety standards*** – For example OSHA standards, ANSI (American National Standards Institute), NFPA (National Fire Protection Association), ACGIH TLVs (American Conference of Government Industrial Hygienists Threshold Limit Values)
- ***Requires that hazards be identified and controlled and that procedures be developed for workers to report hazards without reprisal***
- ***Requires contractors use the hierarchy of controls to mitigate hazards***
- ***Requires that there be communication with workers; that a written Worker Safety and Health Program be available for review; that the 851 poster be posted***
- ***Requires that there be stop work and work refusal procedures***
- ***Requires that workers be trained*** – New workers must be trained. Periodic training is required for the workforce and additional training must be provided when new or increased hazards are present.
- ***Incorporates penalties for violations*** – Investigations and inspections that find contractor non-compliance may lead to enforcement letters, settlements, civil penalties, or fee reductions/contract penalties. Civil penalties up to $70,000 per violation are possible.

U.S. Department of Health and Human Services
National Institutes of Health
National Institute of Enviromental Health Sciences

Your Right to a Safe and Healthful Workplace Includes:

- The right to notify your employer or the local Department of Energy (DOE) office about workplace hazards, without reprisal. You may ask that your name not be used.
- The right to participate in the activities referenced in 10 CFR 851 "Worker Safety and Health Program," on official time.
- The right to access copies of DOE worker protection publications; the worker safety and health program for your workplace; and the standards, controls, and procedures that apply to your workplace.
- The right to have access to some accident and illness recordkeeping logs and the information in records of any workplace illness or injury that you experienced.
- The right to observe monitoring or measuring of hazardous agents, to receive the results of your own monitoring, and be notified when monitoring results indicate overexposure.
- The right to have a representative present during the inspection of your workplace. If no representative is available, the inspector must consult with employees on matters of worker safety and health.
- The right to request and receive results of inspections and accident investigations.
- The right to decline to perform an assigned task because of your reasonable belief that, under the circumstance, the task poses an imminent risk of death or serious physical harm to you, couples with your reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures.

You can find more information on the 851 rule on the web:

http://hss.doe.gov/HealthSafety/WSHP/rule851/851final.html

NIEHS/DOE Training Providers:

Center to Protect Workers' Rights	301-578-8500
Hazardous Materials Training and Research Institute	319-398-5504
International Association of Fire Fighters	202-737-8484
International Brotherhood of Teamsters	202-624-6960
International Chemical Workers Union Council in cooperation with the International Association of Machinists and Aerospace Workers	330-926-1444
International Union of Operating Engineers	304-253-8674
Laborers-AGC	860-974-0800
United Steelworkers/Tony Mazzochi Center	615-831-6775

NIEHS Worker Education and Training Program

For more information, Contact the National Clearinghouse for Worker Safety and Health Training at 202-331-7733 or *www.wetp.org*

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DOE Worker Safety and Health Program Rule Briefing

What You Need to Know about 10 CFR 851

June 2007

WORKER EDUCATION & TRAINING PROGRAM

U.S. Department of Health and Human Services
National Institutes of Health
National Institute of Enviromental Health Sciences

What is 10 CFR 851?

- 10 CFR 851 is DOE's Worker Safety and Health Program (WSHP) rule
- Mandated by section 3173 of the Bob Stump National Defense Authorization Act of 2002
- Overarching umbrella rule. Encompasses the existing contractual requirement for compliance with DOE Order 440.1A and assumes contractor integration of the Integrated Safety Management System (ISMS).

Purpose of the New Rule

- Congress required DOE to issue new worker safety and health regulations that would:
  - Maintain "the level of protection currently provided to…workers"
  - Provide flexibility to tailor implementation to site-specific hazards
  - Recognize special circumstances for "closure" facilities
  - Authorize civil penalties or contract penalties (fee reductions), in the event of a violation, but not both for the same violation

Key Dates

- The rule is effective February 9, 2007
- Actual effective dates require that contractors:
  - Submit their Worker Safety and Health Program (WSHP) by February 26, 2007
  - Give labor organizations timely notice of development and implementation of the WSHP and upon timely request, bargain concerning implementation of the rule
  - Comply with all requirements by May 25, 2007
  - Identify closure facility hazards and controls with 90 days of identifying those hazards

DOE's View of the Rule and Its Relationship to Existing Programs

- Contractors are already required to establish integrated safety management systems
- Contractors are already required to comply with DOE Order 440.1A "Worker Protection Management for DOE Federal and Contractor Employees," including development of a written worker protection program and the final rule "codifies" Order 440.1A
- According to DOE, if contractors have met their contractual responsibilities properly, "little, if any additional work will be necessary"

Main Sections of the Rule

- Subpart A – General Provisions
- Subpart B – Program Requirements
- Subpart C – Specific requirements
- Subpart D - Variances
- Subpart E – Enforcement Process
- Appendix A – Functional Areas
- Appendix B – Enforcement Policy

Subpart A – General Provisions

- Rule covers contractor and subcontractor activities at DOE sites
- The rule applies to all DOE activities EXCEPT:
  - Radiation, which is addressed by separate rules
  - DOE sites/facilities that have already transitioned to federal/state OSHA oversight
  - Naval Nuclear Propulsion Program activities
  - DOE employees
  - Entities with cooperative agreements or grants from DOE

Subpart A – General Provisions

- Compliance Orders
  - Secretary may issue immediately effective compliance orders
  - Compliance orders can mandate a remedy, work stoppage or other action
  - A copy of the compliance order must be prominently posted, once issued, at or near the location where the violation, potential violation, or inconsistency occurred until it is corrected.

Subpart A – General Provisions

- Contractors may file rulemaking petitions to amend or interpret provisions of the rule
- Contractors may seek DOE interpretive rulings which are binding on DOE *only* with respect to the person who requested the ruling
- Informal requests on how to comply may be made to HS-11
- Information requests on enforcement policy should be made to HS-41

Subpart B – Program Requirements

- Contractors must:
  - Provide place of employment free from recognized hazards that cause or have potential to cause death or serious physical harm to workers
  - Ensure work is performed in accordance with all applicable requirements and with the worker safety and health program for that workplace

Subpart B – Program Requirements

- Contractors must:
  - Submit, by February 26, 2007, written worker safety and health programs to the Head of the DOE Field Element for approval
  - Submit one program for all covered workplaces at a DOE site if the contactor is responsible for more than one such workplace
  - Develop and maintain its own program, in coordination with other contractors, to ensure clear roles, responsibilities and procedures at multi-contractor workplaces

Subpart B - Program Requirements

- The Worker Safety and Health Program must:
  - Describe methods for implementing the requirements of Subpart C
  - Integrate Subpart C requirements with other site-specific worker protection activities and with ISMS
- Programs are “deemed approved 90 days after submission if they are not specifically approved or rejected by DOE earlier”
- As of May 25, 2007, “no work may be performed at a covered workplace unless an approved WSHP is in place.”

Subpart B – Program Requirements

- Contractors with labor unions must:
  - Provide timely notice of the WSHP development and implementation
  - Upon request, bargain concerning implementation of the rule
  - Provide a copy of the approved WSHP to affected workers or their representatives, upon written request.

Subpart B – Program Requirements

- Program updates are required when a significant change or addition is made to the WSHP or a change in contractors occurs
- Contractors must inform DOE annually whether or not changes have occurred in their programs
- Contractors must incorporate new DOE directives into their programs

Subpart B – Program Requirements

- Contractors may use existing written programs, ISMS description, or an approved Work Smart Standards process to meet the program requirements if:
  - DOE approves such use on the basis of written documentation
  - The contractor provides specific written justification demonstrating the program requirements have been met

Subpart C – Specific Program Requirements

- Management responsibilities and worker rights and responsibilities
- Hazard identification and assessment
- Hazard prevention and abatement
- Safety and health standards/functional areas
- Training and information
- Recordkeeping and reporting
- Reference sources

Management Responsibilities

- Management must:
  - Establish written policies and goals for the WSHP
  - Use qualified staff (CIH or CSP) to direct and manage the WSHP
  - Assign program responsibilities, evaluate performance, and hold personnel accountable
  - Provide mechanisms to involve workers and their representatives in development of program goals, objectives and performance measures and in hazard identification and control

Management Responsibilities

- Provide workers with access to information relevant to the WSHP
- Establish procedures for workers to report, *without reprisal*, job-related fatalities, injuries, illnesses, incidents and hazards and make recommendations about ways to control hazards
- Provide for prompt response to such reports and recommendations
- Provide for regular communication with workers about workplace safety and health matters

Management Responsibilities

- Establish stop work procedures and procedures to allow workers to decline work
- Inform workers of their rights and responsibilities by appropriate means, including posting the 851 poster where it is accessible to all workers

Worker Rights and Responsibilities

- Workers must comply with the 851 WSHP with respect to to the parts applicable to their own actions and conduct.
- Workers have the right, *without reprisal*, to
  - Participate in activities under the rule on official time
  - Access worker safety and health related information
  - Access limited information on any recordkeeping log
  - Access DOE form 5484.3 containing employee's name as injured or ill

Worker Rights and Responsibilities

- Be notified when monitoring results indicate overexposure to hazardous materials
- Observe monitoring or measuring of hazardous agents and get results of their own monitoring
- Have an authorized representative present during inspections. If no authorized representative is available, inspector must consult with employees on matters of worker safety and health

Worker Rights and Responsibilities

- Request and receive results of inspections and accident investigations
- Express concerns related to worker safety and health
- Decline to perform a task due to reasonable belief the task poses an imminent risk of death or serious physical harm
- Stop work when worker discovers imminently dangerous conditions or other serious hazards

Hazard Identification and Assessment

- Contractors must establish hazard identification and risk assessment procedures
- The procedures must:
  - Assess worker exposure to chemical, physical, biological or safety hazards
  - Document assessment of these hazards
  - Record observations, testing and monitoring results
  - Analyze new facility designs and changes to existing facilities for potential hazards

Hazard Identification and Assessment

  - Evaluate operations, procedures and facilities to identify hazards
  - Perform routine job-activity level hazard analysis
  - Review site safety and health experience information
  - Consider interaction between workplace hazards and other hazards such as radiological hazards
- Contractors must submit a list of closure facility hazards and established controls within 90 days of identifying them

Hazard Prevention and Abatement

- Contractors must establish and implement a hazard prevention and abatement process to ensure that all identified and potential hazards are prevented or abated in a timely manner
- Abatement actions must be prioritized by risk

Hazard Prevention and Abatement

- Hazard controls must be selected based on a hierarchy of:
  - Elimination/substitution
  - Engineering controls
  - Administrative controls
  - Personal protective equipment
- Contractors must address hazards when selecting or purchasing equipment, products, and services

Safety and Health Standards

- Contractors must comply with, among others, the following existing standards as applicable to their facilities:
  - Part 850, DOE Beryllium
  - 29 CFR 1904, OSHA Injury and Illness Recordkeeping
  - 29 CFR 1910, OSHA General Industry Standards
    - Excluding 1910.1096, Ionizing Radiation
  - 29 CFR 1926, OSHA Construction Standards

Safety and Health Standards

- Other standards incorporated by reference include, among others:
  - 2005 ACGIH Threshold Limit Values
    - Plus any OSHA standard on a listed chemical
  - 1992 ANSI Standard Z88.2 for Respiratory Protection
  - 2000 ANSI Standard Z136.1 for Safe Use of Ladders
  - 1999 ANSI Standard Z49.1 for Welding and Cutting
  - 2005 NFPA 70 National Electrical Code
  - 2004 NFPA 70E Standard for Electrical Safety

Standards Adopted by Reference

- DOE CFR 850 Beryllium
- Parts of OSHA's Recordkeeping/ Reporting
- CFR 1910 (except 1910.1096), 1915, 1917, 1918, 1926, 1928
- ANSI Respiratory Protection
- ANSI Lasers
- ANSI Welding, Cutting and Allied Processes
- NFPA 70 and 70E Electrical Code
- ACGIH TLVs
- ASME boiler, pressure, vessel and piping codes
- DOE ES&H Reporting Manual
- DOE Explosives Safety Manual

Functional Areas

- Contractors must address, through a structured approach:
  - Construction safety
  - Fire protection, Explosives
  - Firearms, Pressure
  - Electrical safety
  - Industrial hygiene,Occupational medicine
  - Biological safety
  - Motor vehicle safety

Training and Information

- Contractors must establish a worker training and information program, which requires:
  - Training and information must be provided to new workers before, or at the time of initial job assignment involving exposure to a hazard
  - Periodic training, as often as needed to ensure workers are adequately trained and informed
  - Additional training when information or changed conditions indicate new or increased hazards
  - Training for workers with WSHP responsibilities

Training Issues for NIEHS Grantees

- Existing 440.1A and ISMS based training program will need to be updated/revised to reflect the new 851 programs.
- Training for new functional areas may be required.
- No changes appear needed with respect to radiation training.

Training Issues for NIEHS Grantees

- Specialized training programs such as HAZWOPER and HAZCOM will likely need only minor revisions to reflect the new 851 WSH programs.
- New training programs might be evident as a result of the GAP analysis required by the Standard Review Plan.

Recordkeeping and Reporting

- Contractors must:
  - Have and maintain records of all hazard inventory information, hazard assessments, exposure measures, and exposure controls
  - Ensure that work-related injuries and illnesses are reported and recorded
  - Analyze data for trends and lessons learned

Subpart D - Variances

- This section is patterned after OSHA's variance process and procedures.
- Variances can only be granted by the DOE Under Secretary after consideration of recommendations by the Chief Health, Safety and Security Officer (HS-1)
- Contractors may request a temporary, permanent or national defense variance
- Approval criteria include no undue risk to workers

Subpart E – Enforcement Process

- HS-41 conducts investigations and inspections
- Any worker or representative may request an investigation or inspection (may remain anonymous)
- Contractor may submit statements of fact and/or memoranda of law in the course of an investigation
- Includes provisions for enforcement conferences, enforcement letters, settlement, preliminary and final notices of violation, civil penalties, fee reductions, and administrative appeals.

Key Elements to Enforcement Approach

- Emphasis on contractor implementation and assurance of compliance with worker safety rules.
- Driving a continuous improvement focus, rather than acceptance of status quo.
- Desired contractor timely self-identification and correction of noncompliance conditions and underlying problems affecting compliance.
- Exercise of broad discretion when contactors exhibit the desired approach.

Key Elements to Enforcement Approach

- Taking selective enforcement action for significant safety events or significant precursor conditions, including continued repeat events, close-calls, and general adverse performance.
- Periodic reviews of contractor screening and reporting processes, and selective review of compliance issues in program reviews or focused inspections.
- Stimulating contactor transition from a reactive, event-driven approach to identifying and correcting deficiencies towards a proactive assessment-driven approach.

DOE
10 CFR 851
WORKER SAFETY AND HEALTH PROGRAM: FINAL RULE
FEBRUARY 9, 2006

A REVIEW FROM THE PERSPECTIVE OF WORKER TRAINING AND WORKER RIGHTS AND RESPONSIBILITIES.

National Clearinghouse for Worker Safety and Health
Washington, DC

November 12, 2006
(Updated June 12, 2008)

Introduction:

The Bob Stump National Defense Authorization Act of 2002 amended the Atomic Energy Act of 1954 by adding a new Section 234C that directed the DOE to promulgation a Worker Safety and Health Program rule. On February 9, 2006 the Department published 10 CFR 851, "Worker Safety and Health Program" . The requirements of this new rule were based on the existing requirements contained in DOE Order 440.1A and DOE P 450.4 Integrated Safety Management System (ISMS). The 851 rule might more usefully be viewed as a "process" rule rather than a detailed specification-based prescriptive rule. The rule does have, however, a few important new requirements, such as a biological functional area, and a major new provision establishing severe penalties and fines for non-compliance.

This brief document focuses on the worker training ramifications and opportunities associated with 851 and the worker rights and responsibilities articulated in 851. The purpose of this document is to provide a basis of discussion among the WETP DOE grantees to ascertain to what extent WETP might assist those grantees in meeting emerging training needs that contractors might deem appropriate in meeting the compliance requirements of 851.

Background:

Section 3173 of the Bob Stump National Defense Authorization Act of 2002 amended the Atomic Energy Act by adding section 234C entitled "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." This amendment required DOE to promulgate a worker safety and health rule that maintains "….the level of protection currently provided to *** workers." DOE published a Notice of Proposed Rulemaking (NOPR) on December 8, 2003, held public hearings and televideo conferences, delayed rulemaking in order to address concerns raised by the Defense Nuclear Facilities Safety Board, and published a supplemental NOPR for further review, comment, and public hearings on January 26, 2005. Subsequently, DOE published the Final Rule on February 9, 2006 at 71 FR 6858.

The effective date of the rule, 10 CFR 851 (henceforth termed 851), is February 9, 2007. Actual effective dates require that contractors:

1) submit their Worker Safety and Health Program (WSHP) by February 26, 2007,
2) give labor organizations timely notice of development of the WSHP,
3) comply with all requirements by May 25, 2007, and
4) identify closure facility hazards and controls within 90 days of identifying those hazards.

In addition, contractors are required, among others responsibilities, to:

1) establish written safety and health policy and goals,
2) provide mechanisms to involve workers in the safety and health program,
3) establish procedures for workers to report hazards and stop work, and
4) use qualified safety and health professionals.

The Federal Register Final Rule at 71 FR 6858 contains extensive preamble pages (6858-6929), which discusses in detail reviewer comments and DOE resolution of them. A more detailed discussion of specific section and subsections of the rule beyond what is covered in this paper may be found therein. Further, this paper does not address all sections/subsections of the 851 rule as it focuses on aspects immediately relevant to worker training and worker rights and responsibilities. For example, workers have the right to observe monitoring, but the specific rule requirements are not discussed as they are included in the rule at 851.21.

Foundation of 851.

In general, 851 is designed to be based upon existing contractual requirements (termed Contractor Requirements Document) with respect to safety and health in DOE Order 440.1A "Worker Protection Management for DOE Federal and Contractor Employees", which the 851 rule replaces. Further, all current DOE contractors have successfully implemented the requirements of the Integrated Safety Management System (ISMS). It is DOE's belief that, in general, the requirements of 851 can largely be met on the basis of existing safety and health programs based upon 440.1A and the ISMS to wit "…DOE believes that for contractors that are already in compliance with DOE Order 440.1A, it should require minimal, if any, effort to implement the rule (851) requirements." (851 preamble, page 6914). There are, however, some new requirements in 851 which will require attention by contractors.

Coverage of 851.

There are a number of issues with respect to the coverage of 851 that are important. These include:

1. 851 is based upon a statutory mandate that amended the Atomic Energy Act, and applies to all DOE activities, with some exceptions.
2. Radiation is addressed by separate rules that DOE had previously promulgated in accordance with the Administrative Procedures Act and which remain in force.
3. DOE sites/facilities not established under the Atomic Energy Act are NOT covered by 851 i.e., the Power Administrations.
4. The Naval Reactors program is NOT covered.
5. DOE federal employees are covered by DOE O440.1B, 29 CFR 1960 and Executive Order 12196.
6. Entities with cooperative agreements or grants from DOE are NOT covered even though they may conduct research work on a DOE site as they are not deemed to be a "DOE contractor" or "Under contract with DOE". "Who must comply" with 851 in this arena will no doubt be further clarified by issuances from the DOE Office of General Council.

Compliance Aspects and Implications.

851 is based upon DOE Order 440.1A, which requires compliance with OSHA standards at 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction) among others at 29 CFR. DOE

O 440.1A has been in force, through contractual requirements, for about 10 years. Thus, it is reasonable to assume that DOE contractors, in general, are largely in compliance with the OSHA standards. Such, however,was not always the case as was demonstrated by an extensive audit of the ten (10) Office of Science Laboratories, conducted by OSHA as required by the Congress during the last 6 months of 2003 and the first 6 months of 2004. Those audits found the following results, which may be of significance to DOE workers, labor representatives, and trainers who will or may be involved in the preparation and implementation of 851:

1. Over 16,000 instances were identified of non-compliance, many of them "serious."
2. In each Laboratory, the "electrical" category represented the largest percentage of non-compliant instances (average of 40%). This suggests that special attention to the new Electrical Safety Functional Area under 851.24 and Appendix A, 10 may be appropriate.
3. In general, contractor management had developed excellent written safety and health programs but there was a major problem with respect to effective implementation "on the shop floor."

Further, 851 requires the development of a new "Biological Safety" Functional Area (851.24 and Appendix A. 7).

Contractors are required, per 851.24, to develop a structured approach to their worker safety and health program that includes the Functional Areas listed in Appendix A to the standard. The Functional Areas have been an important aspect of the DOE S&H requirements under 440.1A and the ISMS.

Standards Adopted by Reference.

10 CFR 851, importantly, adopts several rules and consensus standards by reference at 851.23 and referenced at 851.23. These include:

1. DOE 10 CFR 850 Beryllium.
2. 29 CFR parts 1904.4-.11, .29-.33, .44-46 Recordkeeping/Reporting.
3. 29 CFR 1910 (excluding 1910.1096-Ionizing Radiation), 1915, 1917, 1918, 1926, and 1928.
4. ANSI Z88.2 (1992). Respiratory protection.
5. ANSI Z136.1 (2000) Lasers.
6. ANSI Z49.1 (1999) Welding, Cutting and Allied Processes. Limited to two sections.
7. NFPA 70 and 70E (2005 and 2004) National Electrical Code.
8. ACGIH TLV's (2005).
9. ASME boiler, pressure vessel, and piping codes. Several ranging from 1968 to 2004.
10. DOE Manual 231.1-1A. ES&H Reporting Manual.
11. DOE Order 440.1A Explosives Safety Manual

Worker Training and Information (851.25).

The 851.25 Training and Information requirements are quite general. They provide:

(a) Contractors must develop and implement a worker safety and health training and information program to ensure that all workers exposed or potentially exposed (OSHA interpretation of "potentially exposed" can be found under 29 CFR 1910/1926 Hazardous Waste Operations and Emergency Response standard interpretations) to hazards are provided with the training and information on that hazard in order to perform their duties in a safe and healthful manner.
(b) The contractor must provide:
    (1) Such training and information for new workers before or at the time of initial job assignment involving exposure (or potential exposure).
    (2) Periodic (not specified) training as often as necessary to ensure that workers are adequately trained and informed.
    (3) Additional training when safety and health information or changes in workplace conditions indicate that a new or increased hazard exists.
(c) Contractors must provide training to workers who require training in order to carry out their assigned safety and health program responsibilities.

The 851 preamble discussion provides no additional perspective on 851.25 beyond that which is stated in the standard. The comments in ( ) are the authors.

WETP DOE Grantees Training Issues.

With respect to the training issues that may impact and/or offer training opportunities for WETP DOE grantees, the following seem apparent at this time:

1. Existing 440.1A and ISMS based training programs will need to be updated/revised to reflect the new 851 WSH Programs.
2. Specialized training for new functional areas may be required.
3. Expanded training of subcontractor workers may offer an opportunity.
4. No changes appear to be needed with respect to radiation training.
5. Specialized training programs such as HAZWOPER and HAZCOM will likely need only minor revisions to reflect the new 851 WSH Programs.
6. New training programs might be evident as a result of the GAP analysis required by the Standard Review Plan. As coordination with Labor Organizations is required in the development of the 851 WSH Program (851.11), that could serve as the opportunity to discuss such training issues tailored to the contractors identified needs.
7. In order to meet the 851 WSH Program submission deadlines, contractors have already undertaken significant efforts.

Management Responsibilities and Worker Rights and Responsibilities (851 Subpart C-Specific Program Requirements; 851.20).

Subpart C Specific Program Requirements is composed of two subsections: (a) Management responsibilities and (b) Worker rights and responsibilities.

851.20(a) places the following responsibilities on management;

1. Establish written policy, goals, and objectives for the WSH Program.
2. Use qualified staff (CIH's and CSP's) to direct and manage the Program.
3. Assign program responsibilities, evaluate performance, and hold personnel accountable.
4. Provide mechanisms to involve workers and their elected representatives in development of the Program goals, objectives, and performance measures and in identification and control of workplace hazards.
5. Provide workers access to information relevant to the Program.
6. Establish procedures for workers to report, without reprisal, job-related fatalities, injuries, illnesses, incidents, and hazards and make recommendations about appropriate ways to control such hazards.
7. Provide for prompt response to such reports and recommendations (per 6).
8. Provide for regular communication with workers about workplace safety and health matters.
9. Establish protocols to permit workers to stop work or decline to perform an assigned task because of a reasonable belief that the task poses an imminent risk of death, serious physical harm, or other serious hazard to workers, in circumstances where the workers believe there is insufficient time to utilize normal hazard reporting and abatement procedures.
10. Inform workers of their rights and responsibilities by appropriate means, including posting the 851 poster in the workplace where it is accessible to all workers.

851.20(b) places the responsibility on workers to comply with the 851 WSH Program with respect to those parts that are applicable to their own actions and conduct.

851.20(b) identifies the following worker rights, without reprisal:

1. Participate in activities described in this section on official time.
2. Have access to:
    (a) DOE Safety and Health publications.
    (b) The WSH Program for the covered workplace. (Per 851.11(b)(3), the contractor must furnish a written copy of the WSH Program upon written request to affected workers or their designated representatives.)
    (c) The standards, controls, and procedures applicable to the covered workplace.
    (d) The safety and health poster that informs workers of relevant rights and responsibilities.
    (e) Limited information on any recordkeeping log subject to Freedom of Information Act requirements and restriction.
    (f) The DOE Form 5484.3 that contains the employees name as the injured or ill worker.
3. Be notified when monitoring results indicate that the worker has been overexposed to hazardous materials.
4. Observe monitoring or measuring of hazardous agents and have the results of their own exposure monitoring.

5. Have a representative authorized by employees accompany the Director (or his/her authorized personnel) during the physical inspection of the workplace. When no authorized employee representative is available, consultation with employees on matters of safety and health is required, as appropriate.
6. Request and receive results of inspections and accident investigations.
7. Express concerns related to worker safety and health.
8. Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious physical harm to the worker couple with a reasonable belief that there is insufficient time to seek effective redress through normal channels.
9. Stop work when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards, provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with procedures established in the WSH Program.

These management and worker rights and responsibilities should be addressed in some detail in any 851 training program. Linkages to pertinent other sections or subsections of the rule would also be important in order to adequately convey the scope of the workers rights, such as 851.21 Hazard identification and assessment and the WSH Program Stop Work procedures contained in the contractors WSH Program.

Other issues of importance to worker training.

1. *Variances*. The 851 Variance process and procedures (851 Subpart D-Variances) are largely based upon the OSHA variance process and procedures. Variances can only be granted by one of the three DOE Under Secretaries after consideration of recommendations by the Chief Health, Safety and Security Officer.
2. *Standards interpretations*. DOE will rely upon OSHA's published interpretations of the OSHA standards and the interpretations of the DOE Office of General Counsel.
3. *Consensus standards revisions*. Consensus standards are generally reviewed and often updated on a scheduled basis. 851 incorporates several such consensus standards, the effective date of which are stated. An example is ANSI Z136.1 "Safe use of Lasers." DOE has stated in 851 that revised consensus standards will not be automatically adopted as such requires formal rulemaking.
4. *TLV's vs OSHA PEL's and DOE Be PEL*. Where there is a difference between a TLV and an OSHA PEL, the most protective PEL must be used. With respect to Be, while the DOE 850 rule Be standard has a higher PEL than the Be TLV, the 850 rule applies as a change would require regulatory rule making.
5. *Training of a subcontractor worker*. 851 requires that workers be trained (851.25) and that safety and health program requirements apply to to all lower tier subcontractors. With respect to training, the prime contractor may require that subcontractor training programs are consistent with the prime's training requirements or the prime may require that the subcontractor adhere to the prime's 851 WSH Program, in which case the prime may require that subcontractor workers are trained through the prime's training program. (Discussed in FAQ per 851.25).

6. *Standard Review Plan (Final) dated 8/03/06*. This Plan requires the development of a GAP analysis to compare 851 requirements against existing procedures for compliance with DOE Order 440.1A, ISMS system requirements, and other applicable requirements. Following concurrence with the contractors GAP analysis by the Field/Site Office, the contractor must identify the impact and a corrective action plan. As noted in the Standard Review Plan including the checklist as Appendix B, significant actions are required by the contractor in development of the 851 WSH Program, although existing programs and procedures developed per 440.1A and the ISMS will likely serve as the major elements of the 851 Program.
7. *Additional interpretations and guidance*. One may expect addition interpretations and guidance to be issued by DOE as 851 compliance unfolds particularly in the areas of legacy hazards, coverage, and other issues that arise in the GAP analysis. www.eh.doe.gov/health/rule851 should be monitored to check for such.
8. *Approval of 851 WSH Written Program*. The WSH Written Program required by 851 must be approved by "..the appropriate Head of DOE Field Element…" That is the WSH Written Program will be approved in the field and not be subject to final approval by DOE Headquarters. It is likely that the 851 Implementation Guide (over 200 pages) will serve as the framework for both the development of the WSH Written Program but for field approval as well.
9. *Implementation Guide and Training*: The Implementation Guide has little additional guidance with respect to training requirements established by 851 beyond that which is the preamble to 851 and the rule itself, both of which are meager. The Implementation Plan does, however, list a broad range of hazards for which training, among other procedures, is required.
10. *Contractual requirements*. Contractors at any level are required to establish WSH training.
11. *Multiple-employer work sites*. WSH must be addressed on multiple-employer work site. Provisions in this instance are similar to such requirements in the OSHA construction standards. Training may be impacted due to additional hazards that might be created by one of the employers on the site. These provisions of the respective contractor WSH Programs should serve to identify such requirements.
12. *Specific contractor protocols*. The 851 rule gives workers, for example, the right to "stop work" in accordance with the procedures established in the contractors WSH Program. It is essential, of course, that workers fully understand these procedures. Such may be an appropriate training subject combined perhaps with the overall WSH Program training.

Sources of Additional Information.

The following sources provide additional information that may be of value:

1. DOE site/facility and/or contractor Safety and Health Office.
   The Worker Safety and Health Poster (required by the Rule) at http://www.hss.energy.gov/HealthSafety/WSHP/rule851/safeworkplace6-07-final.pdf.http://www.hss.energy.gov/HealthSafety/WSHP/rule851/851final.html

   This site contains several sources of information including the 851 Federal Register Final Rule, 851 position papers, variances, Implementation Guide, FAQ's, and others.
2. WSHP Plan approval including the 8/30/06 Standard Review Plan at http://www.hss.energy.gov/HealthSafety/WSHP/rule851/plan_approval_main.html
3. OSHA standards and interpretations at www.osha.gov.

HANFORD ADVISORY BOARD

A Site Specific Advisory Board, Chartered under the Federal Advisory Committee Act

June 6, 2008

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Re: Uniform Site-Wide Safety Standards

Dear Mr. Brockman and Ms. Olinger,

The Hanford Advisory Board (Board) is aware that Hanford has an enviable safety record compared to similar industrial activity across the U.S. However, the mission of the site, the relative frequency of contractor change, and the nature of the site's hazards create a need for a uniform, effective safety program in order to achieve cleanup activity that wins and maintains the approval of the public, the tribes, and those agencies responsible for public safety.

The Board recognizes the significant strides the U.S. Department of Energy (DOE) is making in improving workplace safety on the Hanford Site. Putting the responsibility of formulating a uniform safety system for the new Hanford Contracts onto the Mission Support Contract (MSC) contractor, yet to be named, has the potential to provide a safety process that has been the wish and desire of Hanford workers for decades. Making the Hazardous Materials Management and Emergency Response (HAMMER) Training facility a part of the process is also applauded.

The mobility of the Hanford workforce as it moves from project to project makes obvious the need for uniformity of safety rules and procedures, especially where compliance with procedures is mandatory. Lack of uniformity has the potential to create uncertainty for workers and to put them in jeopardy. Hesitancy created by such uncertainty can lead to mistakes as work is being performed, setting up scenarios where safety and environmental barriers can be breached. Procedures, too, are often confusing, contradictory and difficult for workers to implement.

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Allowing each contractor to develop separate safety training, respiratory protection programs, and Integrated Safety Management Systems (ISMS), even when meeting DOE requirements, has always resulted in enough difference to foster significant uncertainty and increased risk for workers.

Concern exists that good intentions, as expressed in the MSC Request for Proposal and by DOE officials at a recent meeting of the Board's Health, Safety and Environmental Protection Committee, will not translate into full implementation in the workplace.

Advice:

The Board advises that DOE and its contractors make a special effort to ensure that a carefully formulated uniform safety policy and safety training policy is fully implemented and demonstrated by its effectiveness in the workplace. It should give consideration to the following that the Board believes to be critical elements:

- Uniform safety training and implementation of ISMS for all employees of all contractors and sub-contractors.
- To ensure uniform and fair competition for sub-contract awards, there should be a uniform amount added for costs associated with safety training in all contracts.
- Construction and implementation of a uniform respiratory protection program.
- Maintain the single, uniform Lockout-Tagout program.
- A single, uniform radiation worker training program.
- A single, uniform site-wide beryllium safety program covering all facilities and workers.
- Worker participation in creation and implementation of procedures and safety programs, including worker-led, management-supported safety councils meeting regularly.
- Create and maintain a centralized, site-wide database to track all worker safety and qualifications training.

- All site contractor and sub-contractor participation (including worker representation) in a single, monthly site safety council meeting.

Sincerely,

Susan Leckband

Susan Leckband, Chair
Hanford Advisory Board

This advice represents HAB consensus for this specific topic. It should not be taken out of context to extrapolate Board agreement on other subject matters.

cc: Elin D. Miller, U.S. Environmental Protection Agency, Region 10
Jay Manning, Washington State Department of Ecology
Doug Shoop, Co-Deputy Designated Federal Official, U.S. Department of Energy, Office of River Protection
Steve Wiegman, Co-Deputy Designated Federal Official, U.S. Department of Energy, Richland Operations Office
Nick Ceto, Environmental Protection Agency
Jane Hedges, Washington State Department of Ecology
Doug Frost, U.S. Department of Energy Headquarters
The Oregon and Washington Congressional Delegations

Sunday, Jun. 08, 2008

Hanford Advisory Board calls for uniform safety procedure training

By Annette Cary, Herald staff writer

Uniform safety training and procedures across the Hanford nuclear reservation could make it a safer place to work, the Hanford Advisory Board said in advice to the Department of Energy.

"The mobility of the Hanford workforce as it moves from project to project makes obvious the need for uniformity of safety rules and procedures, especially where compliance with procedures is mandatory," said the board in written advice that also will be sent to Hanford regulators. "Lack of uniformity has the potential to create uncertainty for workers and to put them in jeopardy."

Even if each contractor develops safety training and respiratory protection programs that meet DOE requirements, there is enough difference between them to add to worker confusion, the board said.

Procedures can be "confusing, contradictory and difficult for workers to implement," the board said.

Part of the problem is that Hanford changes contractors like some people change shirts, said Keith Smith, chairman of the board's Health, Safety and Environmental Protection Committee. DOE is in the process of awarding three new contracts, including the tank closure contract awarded this month.

Smith cited the example of Washington Closure Hanford, which started work at Hanford in August 2005 and within its first 18 months of operations had numerous problems, including near misses with electrical safety, radioactive tritium tracked out of a radiological work area and an independent survey that found workers leery of raising safety issues.

The company's safety culture has since turned around "but there was a real gap there for a while and someone could have been seriously injured," Smith said.

The large numbers of small subcontractors doing work on the site also adds to safety training inconsistencies, board members said. In some cases workers for small business subcontractors are not getting the same safety training given to workers at prime contractors, Smith said.

In some cases workers for different contractors are working side by side under different safety requirements and procedures, board members said.

Contractors continue to have different policies for dealing with beryllium, a metal that can cause an incurable lung disease in workers who have an allergylike reaction to it, said board member Gerald Pollet.

One contractor may assign a worker who is known to have the sensitivity to beryllium to work in a building that another contractor considers unsafe for sensitized workers because of the possibility that it contains beryllium-contaminated dust from past work, Pollet said.

Uniform sitewide safety training is past due, said Mike Keizer, who represents the Central Washington Building Trades Council on the board. It will be particularly helpful for construction workers who move from project to project under different contractors.

Hanford already has an "enviable" safety record compared to similar industrial projects, the board acknowledged in its advice. But the unusual hazards, such as high level radioactive waste, make its safety critical, both for workers and also for maintaining public support.

Putting the responsibility for formulating a new uniform safety system into the new mission support contract is a step in the right direction, the board said. The new contractor, who has yet to be named, will take over site services such as security and road maintenance now done under the Fluor Hanford contract that expires this fall.

But the board said DOE needs to take the concept further. Among its recommendations is creating a centralized database available to all contractors that tracks the safety qualifications and training of each worker.

All contractors and subcontractors should be required to participate in the same monthly safety council meeting, the board said.

It also recommended that a uniform amount for safety training be assigned in all contract and subcontract competitions to prevent bidders from reducing the price by cutting corners on safety.

Among the programs that should be included in a sitewide safety program are uniform respiratory protection, uniform radiation worker training and uniform beryllium safety standards and procedures, the board said. It also called for uniform safety training and implementation of integrated safety management systems, which are used to predict what hazards may be encountered and develop response plans before work begins.

DOE already is working on a uniform lockout-tagout electrical safety program, which provides procedures for making sure electricity is shut off and equipment properly tagged to warn workers and prevent electrical shocks or other injuries during work on the equipment or nearby.

"DOE appreciates and agrees with the HAB advice and has previously incorporated requirements for the development and use of common safety processes and training into the new Hanford contracts," said Doug Shoop, deputy manager of DOE's Hanford Richland Operations Office, in a statement.

HANFORD ADVISORY BOARD MEMBERSHIP

ORGANIZATION/GROUP	PRIMARY MEMBER	ALTERNATE
LOCAL GOVERNMENT INTERESTS (7)		
Benton County	Maynard Plahuta	Kenneth Gasper
Benton-Franklin Council of Governments	Rick Jansons	Gwen Luper
City of Kennewick	Bob Parks	Dick Smith
City of Pasco	Robert Davis	Joe Jackson
City of Richland	Pam Larsen	Vince Panesko
City of West Richland	Julie Jones	Donna Noski
Grant & Franklin Counties	Richard Leitz	Bob Adler Art Tackett
LOCAL BUSINESS INTERESTS (1)		
Tri-Cities Industrial Development Council	Harold Heacock	Gary Petersen
HANFORD WORK FORCE (5)		
Central Washington Building Trades Council	Mike Keizer	
Hanford Atomic Metal Trades Council	Becky Holland	David Molnaa
"Non-Union, Non-Management" Employees (2)	Jeffrey Luke Susan Leckband	Laura Mueller Larry Lockrem
Hanford Challenge	Tom Carpenter	Allyn Boldt
LOCAL ENVIRONMENTAL INTERESTS (1)		
Richland Rod & Gun Club	Gene Van Liew	Paul Kison

HANFORD ADVISORY BOARD MEMBERSHIP

ORGANIZATION/GROUP	PRIMARY MEMBER	ALTERNATE
REGIONAL CITIZEN, ENVIRONMENTAL & PUBLIC INTEREST ORGANIZATIONS (5)		
Columbia Riverkeeper	Greg deBruler	Steve White Steve Roney
Hanford Watch	Paige Knight	Robin Klein Steve Hudson
Heart of America Northwest	Gerald Pollet	Helen Wheatley Amber Waldref
Washington League of Women Voters	Susan Kreid	Betty Tabbutt
Citizens for a Clean Eastern Washington	Todd Martin	Phil Brick Dr. Floyd Hodges Dr. Mark Beck Dr. Susan Babilon Cindy Meyer
LOCAL AND REGIONAL PUBLIC HEALTH (2)		
Benton-Franklin Public Health	Dr. Margery Swint	Dr. Gerry Dagle Dr. Tony James
Physicians for Social Responsibility	Dr. Jim Trombold	Dr. Charles Weems
TRIBAL GOVERNMENT (2)		
Nez Perce Tribe	Gabriel Bohnee	John Stanfill Sandra Lilligren Kriste Baptiste-Eke Stan Sobczyk
Yakama Nation	Russell Jim	Wade Riggsbee David Rowland

HANFORD ADVISORY BOARD MEMBERSHIP

ORGANIZATION/GROUP	PRIMARY MEMBER	ALTERNATE
STATE OF OREGON (2)		
Oregon Hanford Cleanup Board	Larry Clucas	Maxine Hines Wayne Lei Barry Beyeler Robert McFarlane
Oregon Department of Energy	Ken Niles	Dirk Dunning John Gear Tom Stoops Paul Shaffer
UNIVERSITY (2)		
University of Washington	Doug Mercer	Mark Oberle
Washington State University	Gene Schreckhise	Emmett Moore
PUBLIC AT LARGE (4)		
	Norma Jean Germond	Nancy Murray
	Keith Smith	George Jansen, Jr. Shelley Cimon
	Bob Parazin	
	Bob Suyama	Mike Korenko
Ex-OFFICIO REPRESENTATIVES		
Confederated Tribes of the Umatilla Indian Reservation	Armand Minthorn	

HANFORD ADVISORY BOARD MEMBERSHIP

ORGANIZATION/GROUP	PRIMARY MEMBER	ALTERNATE
Washington State Department of Health	Earl Fordham	Debra McBaugh John Martell
US Department of Energy-RL	Dave Brockman	Karen Lutz
US Department of Energy-ORP	Shirley Olinger	Erik Olds
US Environmental Protection Agency	Nick Ceto	Dennis Faulk
Washington State Department of Ecology	Jane Hedges	Nolan Curtis

Hanford Advisory Board
Charter and Operating Ground Rules

Revised November 7, 1997

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I. MISSION STATEMENT

The Hanford Advisory Board -- hereafter referred to as the Board -- is an independent, non-partisan, and broadly representative body consisting of a balanced mix of the diverse interests that are affected by Hanford cleanup issues. As set forth in its charter, the primary mission of the Board is to provide informed recommendations and advice to the U.S. Department of Energy (DOE), the U.S Environmental Protection Agency (EPA), and the Washington Department of Ecology (Ecology) -- hereafter referred to as the Tri-Party agencies -- on selected major policy issues related to the cleanup of the Hanford site.

The goal of the Board is to develop consensus policy recommendations and advice. When this is not possible, the Board will convey its recommendations and advice in a manner that communicates the points of view expressed by all Board members.

The Board is intended to be an integral component for some Hanford tribal and general public involvement activities, but not to be the sole conduit for those activities. The Board should assist the agencies in focusing public involvement and make efficient use of Board member's time and energy. Through its open public meetings, advice on agency public involvement activities, and the responsibilities of Board members to communicate with their constituencies, the Board will assist the broader public in becoming more informed and meaningfully involved in Hanford cleanup decisions.

II. SCOPE OF ISSUES

The primary mission of the Hanford site is cleanup, which is defined herein as including both waste management and environmental restoration activities. Thus, all major policy issues to be addressed at the Hanford site may fall within the scope of issues to be addressed by the Board. It is recognized, however, that it will not be possible for the Board to provide informed recommendations and advice on all Hanford policy issues, be they directly related to the cleanup mission or not. Board members serve on a limited time basis. It is also recognized that the Tri-Party agencies may seek advice on some issues from other sources. Thus, it will be necessary for the Board to work closely with the Tri-Party agencies to set priorities as to what the Board considers "major" policy issues. A fundamental responsibility of the Board is to respond to requests for advice from the Tri-Party agencies. Additionally, the Board will identify issues of concern to its members and provide appropriate advice.

The Tri-Party Agreement (TPA) is a primary instrument through which many of the major policy issues related to cleaning up the Hanford site are decided, prioritized, and tracked. Thus, a major focus of the Board will be the content of, and proposed changes to the TPA, and monitoring agency progress in

meeting regulatory milestones, all of which determines the broad strategic direction of Hanford cleanup activities. Other major policy issues may include, but not be limited to:

- reviewing the budgeting and funding of specific Hanford cleanup activities;
- waste management issues, including the treatment, storage, and disposal of all solid, hazardous, radioactive, and mixed waste currently at the site, or generated at the site in the future;
- the determination of future land uses and the release of Hanford lands for other uses, to the extent that the Board determines such uses impact or are impacted by the Hanford cleanup mission;
- full recognition of the treaty rights of affected tribes and in particular the interrelationship between such rights and Hanford environmental restoration and waste management activities;
- local and other land use authorities and requirements, as specified under state and federal law, as they relate to Hanford environmental restoration and waste management activities;
- transportation of wastes and hazardous materials to and from the site;
- the maintenance, restart, or decommissioning and decontamination of contaminated facilities;
- the protection and restoration of natural resources and ecological values;
- the protection of groundwater and restoration of contaminated groundwater;
- impacts on the Columbia River;
- protecting worker and local/regional public health and safety;
- review work force restructuring and community impact plans required by federal or state law with regard to Hanford's transition and downsizing;
- technology development and transfer; and
- strategies for effectively and meaningfully involving the public in decisions regarding cleanup of the Hanford site.

III. MEMBERSHIP AND EX-OFFICIO AGENCY PARTICIPATION

A. **Membership**

As stated above, the Hanford Advisory Board is a broadly representative body consisting of a balanced mix of the diverse interests that are affected by Hanford cleanup issues. Unless the Board decides to change the balance and diversity of its initial membership (which would be considered a major procedural issue -- see Section V.B. below), the Board shall consist of the following:

- Seven representatives of local governmental interests: including one each appointed by the governing bodies of Benton County, Franklin and Grant Counties jointly, the Cities of Kennewick, Richland, Pasco, and West Richland, and one appointed by the Benton-Franklin Regional Council;
- One representative of business interests from the Tri-Cities area, appointed by the Tri-Cities Industrial Development Council, or an organization similar to TRIDEC;
- Five representatives of the Hanford workforce: including two that represent workers that are members of the Hanford Atomic Metal Trades Council and the Central Washington Building and Construction Trades Council; two that are not members of the previous two trade unions, nor in management positions, who can effectively represent cleanup contractor workers and research and development and health contractor workers; and one that represents the interests of workers that have public policy implications that may not be addressed by the other seats in this category;
- One representative of local environmental interests;
- Five representatives of regional citizen, environmental, and public interest organizations with an active interest in Hanford cleanup issues, drawn from and nominated by those regional organizations;
- One representative each of local and regional public health concerns, focusing on individuals and organizations that have a particular expertise in this area;

- One representative of each of the three tribes that have treaty rights that are affected by Hanford cleanup decisions: including the Confederated Tribes of the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe;
- Two representatives of the interests of the citizens of the State of Oregon that might not otherwise be covered by the categories listed above: including one appointed by the Governor of Oregon or the agency that has the lead role for the State of Oregon on Hanford cleanup issues; and one that can represent the broad interests of Oregon citizens appointed by the Oregon Hanford Waste;
- No more than four at-large members individuals who have expressed a general interest in Hanford cleanup issues and who might otherwise contribute to ethnic, racial, or gender diversity on the Board. These at-large seats should be used to bring additional leadership skills and technical, economic, and agricultural expertise to the Board.

The Board shall establish a membership rotation schedule that will maintain the balance and diversity inherent in the original makeup of the Board and, at the same time, encourage new individuals to participate in the Board.

B. Filling Vacancies

When a vacancy occurs on the Board, Ecology and EPA shall consult with the constituency or interest group represented by the seat. The constituency shall submit in writing the names of at least one, but not more than three, prospective appointees. When a vacancy occurs in a seat representing non-union, non-management Hanford workers, Ecology and EPA shall solicit nominations from employees of the relevant group of Hanford contractors. When a vacancy occurs in an at-large seat, Ecology and EPA may advertise for nominations in ways that appear to best meet the intent of Section III.A., ninth bullet, above. Ecology and EPA may interview prospective appointees and may further consult with constituencies prior to submitting nominees to DOE for formal appointment.

C. Sponsoring Agency and Other Ex-Officio Participants

In addition to the members listed above, the Board will include representatives of the three sponsoring agencies who will serve in an "ex-officio" capacity. The term ex-officio is defined herein to mean that the individuals representing these agencies may participate in Board discussions and deliberations on both substantive and procedural matters. However, they will refrain from "voting" when the Board is determining what substantive advice it wishes to give or what procedural direction to take. They are "non-voting" members because it would be inappropriate for them to give advice to the agencies they are representing.

In addition to these three ex-officio sponsoring agency representatives, additional representatives of other state and federal agencies that have regulatory or other decision making responsibilities -- such as the Agency for Toxic Substance Disease Registry, the Bureau of Land Management, and the Washington Department of Health -- may also be asked to participate in an ex-officio capacity.

Finally, from time to time it may be necessary for other Board members who represent local or tribal governments to participate in Board deliberations in ex-officio capacity in order to refrain from providing advice to an agency or governmental entity that they represent that has decision making responsibility. If this becomes necessary, the Board member will communicate this situation at the outset of deliberations on the particular issue that causes the situation to arise, or as soon as it is determined that participation in an ex-officio capacity is necessary.

IV. EXPECTATIONS AND COMMITMENTS OF THE TRI-PARTY AGENCIES AND BOARD MEMBERS

It is the expectation of the Tri-Party agencies that the Board will:

- be a well-informed group of local, regional, and tribal representatives who are focused on problem solving and providing input on key policy decisions;
- improve open communications between and among Board members, the sponsoring agencies, and the public;
- provide broader, more robust definitions of problems, priorities and alternatives;
- help the agencies reach key decisions and set priorities in an era of tight budget constraints;
- provide a forum in which the agencies are publicly accountable for progress on Hanford cleanup and compliance with all applicable state and federal laws;
- provide a forum that can complement and help focus, but not duplicate or supplant other Hanford public involvement activities; and
- advise agencies on how to coordinate and carry out these activities in ways that maximize public involvement opportunities and minimize unnecessary duplication and conflicts in scheduling and contribute to agency decisions that better reflect the principles and values of all of the diverse Hanford interests.

It is the expectation of the Board that the Tri-Party agencies, either in concert or individually, will:

- assist the Board in accomplishing its mission and fulfilling the expectation of Board members as outlined below;
- not attempt to control the Board or its agenda;
- treat Board members with candor and respect;
- listen to and try to understand Board members' views;
- honor, respond and give serious consideration to the views, recommendations and advice of the Board in agency policy development, decisions and actions;
- utilize the Board as an integral component of Hanford public involvement activities to help minimize unnecessary duplication;
- provide sufficient notice to the Board regarding emerging issues and imminent policy decisions in time for the Board to make a choice about whether it wishes to provide recommendations and advice on the decision and/or the manner in which the broader public should be involved in the decision;
- provide information on budget matters early in the federal budgeting process so as to enable the Board to play a meaningful role in budget decisions;
- respond in writing to all written recommendations of the Board, stating the manner in which Board recommendations were incorporated into agency decision-making processes and, if applicable, the reason(s) why Board recommendations were not adopted or followed and how that advice might be changed to become acceptable;
- provide written responses to all written recommendations of the Board in a timely manner, wherever possible affording the Board opportunity to correct information, reply to, or have a dialogue regarding the agencies responses prior to final agency action;
- invite and encourage other agencies involved in issues being addressed by the Board to either participate or interact with the Board;
- work with the Board to provide funds for independent technical assistance, staff and other administrative support, facilitators, and access to information and agency personnel that the Board determines is needed to fulfill its mission;
- ensure that senior agency managers (such as the Assistant Director for Waste Management of the Washington Department of Ecology, the Waste Management Division Director of EPA Region 10, and the Deputy Site Manager of DOE's Richland Operations Office) attend and participate in Board meetings, along with whatever additional agency staff may be necessary and helpful, without overburdening the Board with agency staff participation; and
- help Board members develop clear and understandable information to Board members' constituencies and to the general public.

It is the expectation of Board members and/or their alternates that their fellow members and/or alternates will:

- attend and participate actively in meetings, read and come to meetings prepared to comment on documents, and be available for work between formal meetings (e.g., conference calls); and
- represent information, especially information contained in draft documents, accurately and appropriately, consult with their constituencies, and keep their constituencies well informed.

V. DECISION MAKING

A. Major Policy Recommendations

The Board will operate by consensus in seeking to determine what advice the Board as a whole wishes to convey to the Tri-Party agencies on selected major policy issues. In agreeing to operate by consensus, the Board also agrees that it will try to avoid spending an inordinate amount of time striving to achieve consensus on any selected major policy issue at the expense of striving to achieve consensus on other major policy issues.

The Board also recognizes that there are several levels of consensus that may be possible. The first is unanimous agreement among all Board members on the advice to convey. The second is a consensus that can be characterized as all Board members being willing to "live with" a proposed set of advice. The third is one or more Board members registering dissent, but not wishing to block the Board from providing advice that might otherwise be characterized as a consensus of the Board, but for their dissent. In conveying consensus advice to the agencies, it will be incumbent upon the Board and its chair to accurately describe the level of consensus that has been achieved.

In addition to expressing consent or dissent regarding items proposed for consensus, Board members are free to abstain or "stand aside" from the determination of consensus, if they have a conflict of interest that would prevent them from offering such advice, if it is not part of the mission or role of their appointing organization to participate in discussions on the topic being proposed for consensus, or for whatever other reasons they may choose. It is the responsibility of each Board member or alternate to affirmatively state their desire to abstain from participating in the determination of consensus, if they choose to do so.

In those instances where Board members have strongly held views on a subject that is of vital importance to the interests that they represent, they can block consensus if they believe these views are not adequately addressed by the proposal put forth by other Board members. The Chairperson, facilitator, and staff (see Section VI) will rely on Board members to voice their dissent if they do not agree with a particular policy recommendation that has been proposed by another Board member or members. If consensus cannot be reached, and the Board still wishes to convey advice to the Tri-Party agencies on the issue, the views of Board members may be expressed through majority and minority reports, at the option of those Board members who are in the minority.

Board policy recommendations can be conveyed orally, during the course of Board meetings, or in writing through reports and policy papers. If the Board wishes to convey a recommendation orally through discussions at Board meetings, these recommendations will be recorded in the written summary of the Board meeting at which they were conveyed (see Section IX.B.).

It is understood that a Board member or alternate's absence from a meeting does not imply consent to any recommendation. However, it is the responsibility of each Board member to review the draft meeting summary or written report through which a proposed or draft consensus is characterized, and voice their dissent, if they so choose, prior to or at the next meeting of the Board.

In no instance shall the Board convey consensus policy advice, or characterize its advice as being a consensus of the Board, unless there exists a quorum of at least half of the non-ex-officio members or alternates in attendance at the meeting at which consensus is being determined.

B. Major and Minor Procedural Decisions

Throughout its deliberations, the Board will need to make major and minor procedural decisions. Similar to selected major policy issues, for major procedural decisions the Board will operate by consensus. Major procedural issues include such issues as whether to create Committees or other subunits of the Board, the frequency of Board meetings, changes in Board leadership or membership, changes in the Board's Charter or Ground Rules, etcetera. If the Board is unable to achieve consensus on a major procedural issue, then a two-third majority vote will determine whether the Board will follow a proposed course of action, so long as there exists a quorum of Board members or alternates that consists of at least one-half of the full number of Board seats.

In the case of minor procedural issues, such as precise meeting dates and locations, the appropriate date for completing an advance mailing to the Board, etcetera, the Board will also strive to achieve consensus where possible or appropriate. If consensus on such issues is not possible or appropriate, the Chair will decide what course of action to follow.

The Chair will also decide whether procedural issues can be considered major or minor. For major issues, the Chairperson will ensure that the decision making process outlined above is followed. For minor issues, the Chairperson will be expected to act on behalf of the interests of the full Board in making a decision. Members of the Board are responsible for communicating to the Chair any concerns they may have about these decisions. If a dispute arises as to whether a particular procedural issue should be considered major or minor, this dispute will itself be considered a "major procedural issue" and will be resolved in accordance with the process outlined above for such issues.

VI. ROLES AND RESPONSIBILITIES

A. Chair and Vice Chair

1. The Chair shall be appointed by the sponsoring Tri-Party agencies, based on the advice and recommendations of Hanford stakeholders. The Chair will be responsible for protecting the interests of all Board members and will act in a fair and balanced manner with respect to the Board's operation, the conduct of Board meetings, and all other activities associated with the Chair's involvement with the Board.
   The Chair, with the assistance of a facilitator and/or Tri-Party agency staff will strive to determine the views of all Board members regarding Board advice on major policy issues and the determination of what course of action to follow on major procedural matters. The Chair will work to achieve a consensus among all Board members on such issues and matters, to the greatest extent possible, but to also understand when consensus is not possible and some other course of action is necessary.

   The Chair will have the authority to represent and convey the views of the Board before the sponsoring agencies, elected officials, and in public settings, such as before Congress and State Legislatures. With the assistance of a facilitator and/or agency or other support staff, the Chair will be responsible for ensuring the development of meeting agendas that reflect the issues of concern to Board members and the sponsoring agencies, and the production of meeting summaries that accurately reflect the content of Board deliberations.

   The term of office of the Chair will be for two years, with opportunity for reappointment for no more than two additional terms of two years each. Should a Board member believe that the Chair is not performing in a fair and balanced manner, it is the responsibility of the member to raise their concerns to the Chair, to the full Board, or the representatives of the Tri-Party Agencies for consideration.

2. A Vice Chair will be selected by the Board to serve in the absence of the Chair.

The term of office of the Vice-Chair will be for two years, with the opportunity for reappointment for no more than two additional terms of two years each.

B. Board Members and Alternates

With the exception of the at-large members, Board members are responsible for representing the interests and concerns of the organizations, institutions, or constituencies that have appointed them. Therefore, Board members will be expected to consult with these entities and constituencies on a regular basis concerning the discussions and recommendations of the Board. At-large members may consult with other individuals or organizations to assist them in assessing and defining the interests of the public at large but are not expected to do so.

Board members are expected to attend as many of the Board meetings as possible. If a Board member or their alternate(s) are absent for more than 25% of the meetings annually, or for three consecutive Board meetings, they shall be considered for replacement.

Each member may designate a primary alternate who may attend Board meetings or meetings of subunits of the Board in the event the member cannot attend. When necessary and appropriate, additional alternates may be designated to form a team of individuals who can represent the interests and concerns of the appointing organizations, institutions, or constituencies in the various activities of the Board. When a vacancy occurs in a Board member seat, the vacancy will be filled in accordance with Section III. B. above.

Board members or their alternates will be expected to participate actively in meetings, to read and be prepared to comment on documents, and be available for work between formal meetings (e.g., meeting of subunits, conference calls, etc.). In addition, Board members will seek to offer sound, quality recommendations to the sponsoring agencies on issues of importance to the Board and the agencies. In striving to achieve consensus on major policy and procedural issues, Board members will listen carefully to the views expressed by other Board members and seek to find ways to reconcile those views with their own, without entering into positions that might cause them to compromise on matters of principle or fundamental importance to interests that they have been charged to represent.

C. Tri-Party Agency Representatives and Staff

The sponsoring, Tri-Party agencies shall each appoint a senior agency manager to represent the agency in Board meetings and other important Board activities. As of the date of the initial convening of the Hanford Advisory Board, such senior representatives include the Assistant Director for Waste Management of the Washington Department of Ecology, the Waste Management Division Director of Region 10 of the U.S. Environmental Protection Agency, and the Deputy Site Manager of the Department of Energy's Richland Operations Office.

Each agency shall also appoint a primary alternate who will attend Board meetings and represent the agency in the absence of the designated senior representative. In addition, each agency shall ensure that appropriate agency staff are in attendance at Board meetings, and subunits of the Board, in order to be responsive to Board needs without overburdening the Hanford Advisory Board process with agency staff participation.

As noted above, Tri-Party agency representatives will not participate in Board decisions regarding advice on major policy decisions (i.e., they will not provide advice to themselves). Tri-Party agency representatives will, however, participate in Board decisions regarding major and minor procedural matters, but they will not attempt to control the Board or its agenda. Agency representatives agree to listen and attempt to understand Board members' views on major policy issues and procedural matters.

The Tri-Party agencies will respond in writing to all written recommendations of the Board, stating the manner in which Board recommendations were incorporated into agency decision-making processes. The agencies will report the reason(s) why Board recommendations were not adopted or followed and how that advice might be changed to become acceptable. The agencies will provide written responses to all written recommendations of the Board in a timely manner, wherever possible affording the Board opportunity to correct information, reply to, or have a dialogue regarding agency responses prior to final agency action.

In addition, the Tri-Party agencies will provide sufficient notice to the Board regarding emerging issues and imminent policy decisions in time for the Board to provide recommendations on the decisions and/or on the manner in which the broader public should be involved in the decision. The Tri-Party agencies will work with the Board to provide funds for independent technical assistance, staff and other administrative support, facilitators (if necessary), and access to information and agency personnel that the Board determines is needed to fulfill its mission.

D. Facilitator(s) and Other Support Staff

The role of a neutral third party facilitator and support staff, if utilized, is to assist the Chair and the Board to accomplish the Board's mission. In all instances the facilitator, who will serve at the pleasure of the Board, shall operate in a completely neutral, balanced, and fair manner. Specific tasks that a facilitator might be asked to accomplish are developing draft meeting agendas, assisting the Chair in conducting and otherwise managing Board meetings and deliberations, consulting with the Chair and Board members between meetings about how to manage the process and resolve substantive and procedural issues of concern, and preparing draft and final meeting summaries and other Board documents.

Other support staff may either be provided by the sponsoring agencies or asked to be involved in board activities by the Chair and/or the Board. The role of such staff shall generally be to support the Chair and the Board in accomplishing the Board's mission. The specific tasks of such staff shall be specified at the time that they are asked to be involved in the Hanford Advisory Board process.

VII. FUNDING CONSIDERATIONS

Funding for the Board's activities and operations will be provided by the U.S. Department of Energy. For purposes of assuring independence and guaranteeing access to such funds on a timely basis, the funds will be administered by an independent fiscal agent. This agent will be determined by the Board, in consultation with the Tri-party agencies.

The Department of Energy commits to provide funding levels adequate to cover or provide:

- technical assistance sufficiently adequate for independent review of all major policy issues that the Board believes warrant independent technical advice or review prior to the Board rendering advice. The Board shall determine adequacy of funding.
- facilitation assistance;
- administrative assistance;
- meeting costs and costs associated with Board member travel and a reasonable reimbursement of incidental incurred expenses through a per diem or honorarium;
- preparation of information on key technical policy questions and technological issues. These resources shall be used by the Board to prepare materials that will be easily understood by the public, with provision for adequate dissemination of such information to the public and to constituencies represented by the Board.

Annual funding levels will be determined through annual consultation between the Board and the Tri-

Party agencies, and will be based upon a proposed budget presented by the Board. The Board will determine how to approve expenditures within its total annual budget.

VIII. STRUCTURAL COMPONENTS: EXECUTIVE COMMITTEE, OTHER COMMITTEES, WORK GROUPS AND TASK FORCES

From time to time the Board, at its discretion, may wish to create subgroups or subunits of various kinds to ensure the efficient and successful accomplishment of its mission.

A. Executive Committee

One such subunit may be the establishment of an Executive Committee. Unless otherwise determined by the Board, the role and function of the Executive Committee is to help the Chair make decisions on procedural matters between Board meetings (such as the agenda for upcoming Board meetings, meeting dates and locations, etc.), to consult with the Chair regarding efforts to resolve substantive policy issues between and during Board meetings, and, along with the Chair, to represent the Board before the sponsoring agencies, and elected officials and legislative bodies.

If formed, the Executive Committee shall consist of the Chair, Vice Chair (if applicable), and a number of other Board members to be determined who represent a cross-section of the Board's membership. These members will be selected in accordance with a nomination and, if necessary, voting procedure to be determined by the Board. Where necessary and appropriate, a representative of each of the Tri-Party agencies will also attend and participate in Executive Committee meetings and deliberations.

B. Other Board Committees and Work Groups

The Board may also wish to create committees to address issues of an ongoing nature. Unless otherwise determined by the Board, membership in Board committees shall be limited to Board members and alternates and, typically, should not exceed fifteen persons.

Each committee shall select a chair and vice-chair, who will serve at the pleasure of the committee. The committee shall determine the selection process. An effort should be made to achieve committee consensus on the chair and vice-chair and every effort should be made to ensure full participation of the committee in the selection process. As a minimum, a majority vote shall be required. Voting on the committee chair and vice-chair shall be by only those committee members listed on the committee roster at that point in time. Where a Board seat is represented by two or more people, there shall be only one vote for that Board seat. Every effort should be made to secure the vote of absent committee members. The selection of a committee chair shall be announced at the subsequent Board meeting and shall not require Board approval.

In addition, the Board, or one of the Board's committees may wish to form smaller work groups to develop specific work products or to discuss specific issues that are of a time sensitive nature and fit within the overall scope of issues to be addressed by the Board.

Board committees and work groups shall not have the authority to issue advice directly to the Tri-Party agencies. Rather, they will develop draft proposals regarding such advice for consideration by the full Board in accordance with ground rules specified herein. The Chair and the Board as a whole shall make every effort to ensure that Board committees, and where necessary and appropriate, Board or committee work groups, represent a diversity of views that are concerned with focus of that subgroup.

C. Task Forces

As another component of its operation, the Board may wish to form, or encourage the formation of, task forces to address issues that are either time dependent, or more narrowly focused than its primary mission. As used in these ground rules, the term task force is defined as a body whose membership may be drawn from individuals and organizations that do not participate directly on the Hanford Advisory Board, as well as from within the Board.

In establishing such task forces, the Board must determine whether it is forming the task force or simply encouraging its formation. In the case of the former, the established task force would operate similar to a Board committee or work group in that it would not provide advice directly to the Tri-Party agencies, but rather would develop draft proposals regarding such advice that would then be considered by the Board in accordance with the ground rules specified herein. In the case of the latter, the Board would be encouraging the formation of a task force that would be free to provide advice directly to the appropriate agency or agencies under whatever ground rules the task force deems appropriate.

Individuals outside of the Board who are asked to participate in such task forces should have a clear and present interest in the issues to be addressed and a willingness to devote the time and resources necessary to effectively participate in the process.

IX. MEETINGS, PUBLIC INVOLVEMENT, AND PRESS INQUIRIES

A. Open Meetings/Opportunity for Public Comment

All meetings of the Hanford Advisory Board itself, and its work group, committee and/or task force meetings shall be open to the public and shall be conducted in accordance with the Federal Advisory Committee Act and the Washington Open Public Meetings Act. Observers, alternates, and members of the public are welcome to attend all meetings of the Hanford Advisory Board and its subgroups. The public will be given reasonable notice as to when Board meetings or subgroup meetings will be conducted. The public will be given the opportunity for at least one formal comment period during the course of each of these meetings. Other opportunities for public comment will be offered at the discretion of the Chair or in accordance with the agenda developed by the Chair, the Board, or its facilitator.

B. Public Participation Plan, Mailing List of Interested Persons, and Public Notice

The Tri-Party Agencies, based on advice from the Board, shall develop a public participation plan regarding Board activities that is compatible with the Tri-Party Agreement public participation plan. At a minimum, the public participation related to Board activities shall designate an official from one of the sponsoring Tri-Party agencies, or a contracting entity that is directly responsible to a Tri-Party agency, who will maintain a mailing list of persons interested in the activities of the Hanford Advisory Board. This mailing list shall be updated periodically and shall be used to provide notice of all meetings of the Board. To the greatest extent possible, such notice shall be provided no less than thirty days prior to the date of the meeting. Where necessary and appropriate, notice shall also be made through advertisements in major newspapers.

C. Press Inquiries/Contacts

In responding to inquiries from, or initiating contact with the press or other media representatives, Board members agree to refrain from characterizing the views or opinions expressed by other Board members and to exercise comity and appropriate restraint in commenting on the Board's deliberations and processes. Formal Board recommendations issued in writing will be made available to the press and general public, along with summaries of Board meetings that have been approved by the Board.

X. ACCOUNTABILITY AND MUTUAL RESPONSIBILITIES

The Board will maintain a written record that will accurately summarize the content of and any decisions made by the Board at Board meetings. This written summary will be prepared in draft form and all Board members will be provided an opportunity to suggest revisions and changes to a draft meeting summary if they do not believe it accurately portrays the content of the Board's deliberations. Once approved as final, meeting summaries will be available to the public upon request.

The Chair and each member of the Board have a joint responsibility for assuring that these operating ground rules are observed. Board members are encouraged to bring concerns regarding the operating ground rules, and adherence thereto, to the attention of the Chair for consideration of possible revision or other appropriate action. Since the success of the Hanford Advisory Board depends upon the cooperation and effective communication between and among its members, Board members and Tri-Party agency representatives agree to:

- listen carefully to each other and not interrupt;
- adhere to the ground rules and respect the procedural guidance and recommendations of the Chairperson;
- avoid personal attacks; and
- avoid characterizing the views or opinions of another Board member outside of any Board meeting or activity.

The Chair and each member of the Board also have a joint responsibility to ensure that the aspects of the Board's mission that pertain to broader public involvement in the Hanford Advisory Board process and, more importantly, the Hanford cleanup decision-making process, are accomplished.

At the end of each year of operation, or at other times if necessary, the Board will evaluate and, if necessary, revise these ground rules and the membership of the Board with the objective of ensuring an efficient and fair process, and balanced and diverse membership.

Finally, the Chair and each member of the Board have a joint responsibility to periodically and honestly evaluate the effectiveness of the Board in accomplishing its mission, the degree to which the Board's mission is still necessary and relevant, and through such an evaluation to determine whether the Board should continue to exist.

Core Team Labor Union Representative

and

Stakeholder Bios

For July 17, 2008 HSS/Union Meeting

Erich J. (Pete) Stafford

Director
Safety and Health Department
Building Construction Trades Department AFL-CIO
AND
Executive Director for the Center for Construction and Research Training (CPWR)

Pete Stafford is the Director of the Safety and Health Department, Building and Construction Trades Department, AFL-CIO and is responsible for occupational and safety health issues related to the building and construction industry. In this position, Mr. Stafford also represents the National Building Trades and 15 International Unions on all safety and health matters, including research and training; and provides assistance to state and local councils in developing programs specific to regional needs and policies.

In addition, Mr. Stafford is the Executive Director of the Center for Construction Research and Training (CPWR). The CPWR is a nonprofit research and development institute established by the Building and Construction trades Department of the AFL-CIO. Mr. Stafford also serves as Principal Investigator for the NIOSH Cooperative Agreement for Construction safety and Health Interventions, the NIOSH Centers for Construction Safety and Health, and the NIEHS Cooperative Agreement for EPA and DOE Hazardous Materials Worker Health and Safety Training. Mr. Stafford authors applications for, and currently administers, 17 Federal grant programs. As Executive Director of the CPWR, Mr. Stafford oversees all products/reports preparation and dissemination; direct marketing and public relations; and reports findings to construction union leadership.

Mr. Stafford is currently a member of the following professional affiliations:

- National Safety Management Society
- Building and Construction Trades Department Safety and Health Committee
- Washington Construction Safety Association
- American National Standards Institute
- National Safety Council

Frank L. Migliaccio, Jr.
Executive Director of Safety and Health
International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers

Frank L. Migliaccio is the Executive Director of Safety and Health for the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers. He is a U.S. Department of Labor (DOL) OSHA 500 Master Instructor (Train-the-Trainer), and a (DOL) Mine Safety Health Administration Master Instructor for the Ironworkers Train-the-Trainer classes given at the University of San Diego in California. He is also an instructor for OSHA Hazardous Material, Scaffold, Lead, Confined Space and Subpart R- Steel Erection training, among others. Previously he served as the Director of Safety and Health Training for the Ironworkers National Training Fund and was a member of the Subpart N, Crane and Derrick Negotiated Rule Making Committee.

Mr. Migliaccio chairs the AFL-CIO Building and Construction Trades Departments Safety and Health Committee and sits on the Advisory Committee on Construction Safety and Health. Other committee memberships include the Ironworkers Safety Advisory Committee, the Mine Safety and Health Alliance Committee, Department of Labor Drug Free Workplace Alliance, the National Commission of the Certification of Crane Operators, the Specialized Carriers and Rigging Association's Labor Committee, and the IMPACT Substance Abuse Task Force.

Mr. Migliaccio has been an Ironworker for close to 38 years. He has 17 years of field experience, served as an apprentice coordinator for Local Union 201 in Washington D.C., and has been working at the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers for the past 17 years, with almost 7 years in his current position as Executive Director of Safety and Health.

Frank Migliaccio attended the University of Maryland where he majored in Industrial Arts Education.

James R. Tomaseski
International Brotherhood of Electrical Workers
Director - Safety and Health Department

WORK HISTORY

1978 - Graduated from Lineman Development Program, Virginia Electric & Power Company (63 month training program)

1978 – 1993 - Employed as a lineman, Virginia Electric & Power Company, performing work on:

- overhead and underground distribution system construction and maintenance work on voltages up to 34.5 kV utilizing both hot-stick and rubber gloving techniques
- underground distribution system construction and maintenance work on voltages up to 34.5 kV
- all aspects of transmission systems including hot stick work 110 -500 kV, and bare hand work techniques, 230 - 500 kV
- 5 years experience performing trouble shooting/service restoration procedures

1993 – 2001 - Employed by the International Brotherhood of Electrical Workers, Utility Department
Primary responsibilities included:

- Safety and Health issues related to the Electric utility industry
- Coordinating NESC, ASTM, IEEE, ANSI, NFPA and other code work activity for Utility Department staff

Current Position - Director, Safety and Health Department
Primary responsibilities include:

- Safety and Health issues related to all branches of membership in the IBEW
- Broadcasting, Construction, Manufacturing, Railroad, Telephone, Utility
- Representing the IBEW on National Consensus Standards Committees
- ANSI, ASTM, IEEE, NESC, NFPA
- Liaison with OSHA regarding regulation development, compliance, and enforcement

STANDARDS COMMITTEE ACTIVITY

Member of American Society for Testing and Materials (ASTM) Committee F-18 on Electrical Protective Equipment for Workers, holding the following Committee positions:

F-18 Main Committee – IBEW Representative
F-18.65 on Wearing Apparel - Secretary
F-18.35 Task Force on “Hot” ropes - Chairman
Voting Member of F-18.15 on Worker Personal Equipment, 18.25 on Insulating Cover-Up Equipment, 18.35 on Tools & Equipment, 18.45 on Mechanical Apparatus

STANDARDS COMMITTEE ACTIVITY (cont.)

ASTM Committee E34 on Occupational Safety and Health
ASTM Committee E13 on Pedestrian/Walkway Safety and Footwear

Member of the following Committees on the National Electric Safety Code (NESC / ANSI C2):

Main Committee - Vice Chairman
Subcommittee 1 - Purpose, Scope, Application, Definitions, and References
Subcommittee 2 - Grounding Methods
Subcommittee 3 - Electric Supply Stations
Subcommittee 4 - Overhead Lines/Clearances
Subcommittee 7 - Underground Lines
Subcommittee 8 - Work Rules - Chairman
Executive Subcommittee - Voting member
Interpretations Subcommittee - Voting member

Member of Institute of Electrical and Electronic Engineers (IEEE) Power Engineering Society / Electrical Safety and Maintenance of Lines (ESMOL), serving on several Task Forces involved with IEEE Standards development.

Member of American National Standards Institute/Scaffold Industry Association (ANSI/SIA) A92 Committee on Aerial Platforms serving on the following subcommittees:

A92.2 - Vehicle-mounted Elevating and Rotating Aerial Devices

Other ANSI Standard Membership:

A10 - Safety Requirements for Construction and Demolition (Vice-Chairman)
A14 - Ladders
Z133 - Tree Care Operations
Z244 - Control of Hazardous Energy (Lockout/Tagout)

OTHR PROFESSIONAL ACTIVITY

IBEW representative to the National Safety Council
- Member of the Construction Division, Utility Division, and Labor Divisions

IBEW representative to the Electrical Safety Foundation International

Safety Equipment Institute – Board member

International Electro-Technical Commission (IEC) – Deputy Technical Advisor to the United States technical advisory group (TAG) to Technical Committee 78 on Live Working (TC-78)

Biographical Work History
of
William D. "Chico" McGill
Labor Representative & Safety and Health Emphasis

Date of Birth: January 12, 1951

Business Address: I.B.E.W. International Staff
900 Seventh Street N.W.
Washington, D.C. 20001
Work 202-728-6042

Home Address: 23226 Bent Tree Lane
California, MD. 20619
Home 301-862-4274

Titles and Positions currently held, or have held:

International Brotherhood of Electrical Workers (IBEW);

Appointed by International President Edwin Hill as the Director of the Government Employees Department of the IBEW.

Responsibilities are to work in conjunction with other departments as matters may develop with the primary focus being workers with collective bargaining agreements in the federal sector. This includes Department of Homeland Security, Department of Defense, and Department of the Interior, Department of Energy, Bureau of Reclamation, and Government Printing Office. National Aeronautic Space Administration, Army Corp of Engineers, as well as other Executive Agencies, including all federal shipyards and private shipyards in the United States and shipyards and Governmental Agencies in Canada under IBEW jurisdiction. This also includes State, Municipal, Provincial, and County employees.

This covers workers in many areas and classifications from park rangers, to public works employees, first responders and police, utility workers, marine electricians, electronic technicians, maintenance workers etc.

To assist in the organizing of members in the above entities, assist local unions as well as the Districts in the IBEW from safety related topics that may impact federal employees or shipyard workers in conjunction with our Safety Department to contractual matters, including new legislation.

IBEW LOCAL UNION 733;

1- Business Manager/Financial Secretary, 1997 to 2005
2- Assistant Business Manager, 1977 to 1979 & 1988 to 1997
3- Chairman Local Union's Safety Committee 1977 to 1979 & 1987 to 1997
4- State Vice-President AFL-CIO Executive Committee
5- Executive Board Member Mississippi State AFL-CIO
6- President Jackson County Central Labor Council

7- Appointed as Delegate to Maritime Trades Department Convention AFL-CIO by IBEW International President J.J. Barry
8- Vice President Mississippi State Electrical Workers
9- Affiliated Member Pascagoula Metal Trades Council
10- Affiliated with and Executive Board Member New Orleans Metal Trades Council
11- Member Board of Directors South East Mississippi Red Cross
12- Sponsor Electrical Apprenticeships Ingalls Shipbuilding & Avondale Shipyard
13- Member Jackson County Chamber of Commerce
14- Member National Workforce Coalition
15- Chairman of AFL-CIO Committee and Member of a Coalition of Health Care Professionals and Local Chamber of Commerce & Labor Unions on Health Care Reform
16- Chairman of the New Orleans Metal Trades Council Safety Committee

NORTHROP GRUMMUN SHIP SYSTEMS INGALLS SHIPBUILDING DIVISION;

1- Member and Past Co-Chairman, Ingalls Shipbuilding Labor/Management Safety Committee 1987 to 1990
2- Member Steering Committee for Safety Action Teams, 1997 to 1999
3- Member Joint Apprenticeship Training Committee 1997 to 2000

NATIONAL SAFETY COUNCIL LABOR DIVISION

1- Member National Safety Council, Labor Division, 1987 to present, Including Membership and Past Chairmanship of Maritime Safety Committee, and active member of the following committees in the Labor Division: Executive Committee, Program Planning Committee, Welcoming Committee, Government/Labor Agencies and Standards Committee, Promotion of Training and Education in Safety and Health Committee, Bylaws Review Committee Chairman
2- Member Board of Directors, representing the Labor Division 1996 to 1998
3- Appointed to Board of Delegates after redefining structure of Council 1998 to 1999
4- Vice Chairman Labor Division 1997 and 1998
5- Chairman of the Labor Division 1998 to 1999
6- Currently Labor Division Secretary
7- Recently appointed to the Nominating Committee of the Labor Division of the National Safety Council

NSRP/MARITECH;

1- Member and Past Co-Chairman representing the interest of the International Brotherhood of Electrical Workers, at the National Shipbuilding Research Programs, Ship Production Panel 5, Human Resource Innovation Committee

2- Associated with the Society of Naval Architects and Marine Engineers
3- Appointed by IBEW International President J.J. Barry to represent The IBEW in what is now a part of MARITECH, September 1993 to 2005

MARITIME ADVISORY COMMITTEE TO OSHA "MACOSH";

Appointed by former Secretaries of Labor, Robert B. Reich, Alexis Herman as well as present Secretary of Labor Elaine L. Chao as a Consultant representing Labor Committee to OSHA, from 1995 to 2004.

Experience:

The following information is reflective of my experience in the field of safety and health related activities, as they relate to Union and Labor Management Relations. All other qualifications of work or Trade related experience as an electrician is available upon request.

8/77 to 4/79 Titles: a) Assistant Chief Steward, IBEW Local Union 733
b) Assistant Business Manager, IBEW Local Union 733

Duties: Responsible for enforcement of contractual requirements of safety and health language for all Bargaining Unit Employees at Ingalls Shipbuilding Inc., Pascagoula, Mississippi. Participated in the writing of the Local Union Newsletter with safety and health reminders, as well as Educating Local Union stewards in the OSHA requirements for CFR 1915 & 1910, as well as requirements of the NEC.

5/81 to 6/82 Duties: Returned to employment at Ingalls Shipbuilding as A First Class Electrician and was appointed a Craft Inspector for the Tarawa Class ships being built. In this Capacity, was responsible for assuring the safe and proper Installation of all types of electrical equipment and Systems according to IL/SPEC. Was a liaison Between Ingalls Electrical Department and Quality Assurance for Ingalls Shipbuilding as well as Navy QA, resigned for other employment.

6/82 to 10/84 Duties: Employed by a maintenance contractor at Borg Warner Chemicals, in Port Bienville, Mississippi. Responsible for educating new employees in safe application and installation of electrical equipment in hazardous Locations as defined in the National Electrical Code. This was under the Japanese style of Participative Management and Team Concept. Left to be self employed.

10/84 to 1/86 Duties: Subcontracted with American Information Management Systems installing computerized fuel management systems on crew boats and supply boats in the Gulf of Mexico and Inland River waterways. These jobs had to pass Coast Guard Inspection as to safe installation and Operation. I was responsible for up to four workers while on shipboard, and upgrading of safety training and Education of the safe installation of these systems, left to return to employment at Ingalls Shipbuilding Inc.

3/86 to 2005 Title a) Chief Steward, IBEW Local Union 733, 6/87 to 2/88
b) Assistant Business Manager, IBEW Local Union 733, 2/88 to 3/97
c) Business Manager/Financial Secretary IBEW Local Union 733, 3/97 to present
d) Chief Negotiator (Contracts)

Duties: Returned to Ingalls Shipbuilding Inc., as a Marine Combination Electrician, and was once again appointed to Positions in the Local Union representing approximately 1,800 Bargaining Unit employees. Responsible for the Review of Company safety procedures and problems related to safety and health; formulate and suggest programs and procedures for recommendation to management. Appointed Chairman of the Local Union's Safety and Health Committee with the duty of educating the membership on safety and health related topics. Lead spokesman on OSHA Standards up for Public comment affecting the shipbuilding industry, as well as becoming the lead representative for the Local Union during all OSHA inspections, having had party status during inspections and following OSHA proceedings at Ingalls.

Appointed in 1989 as Safety Representative on the Ingalls Labor/Management Safety Committee, served as Co-Chairman of that committee and remain an active member. Was appointed to represent the Local Union at the Shipyard Employment Standards Advisory Committee meetings in the fall of 1992 and attended meetings until the committee was dissolved by Presidential directive.

Appointed in 1987 to represent the Local Union at the Labor Division of the National Safety Council, still an active member and officer in the Labor Division, helped to establish the Maritime Industries Safety Committee, which served the safety and health interest of workers in the maritime trades. As Safety and Health Committee Chairman at the Local Union, I have started a program in CPR and First Aid training as an Agency of the National Safety Council. In January 1995 we became a Training Agency for Levels 1 & 2 First Aid and CPR, (Adult to Infant including Choking Victims)

Education:

Basic: St John Catholic School Grades 1 to 6
Leonardtown Junior High Grades 7 to 8
Chopticon High School Grades 9 to 10
All in St. Mary's County, Maryland

Attained GED at age 16 in the Job Corp at the Breckinridge Job Corp Center in Morganfield, Kentucky.

Attended two semesters at Jeff Davis Junior College and Majored in Radio Broadcasting took mainly academic courses in English, Oral Speech, etc.

Safety Related:

I have pursued Continuing Education courses obtaining CEUs to enhance my ability to train and educate the stewardship and membership in areas of safety and health. These courses have been at the institutions of higher learning listed below:

1) Georgia Institute of Technology, Atlanta, Georgia
   a. OSHA Injury and Illness Reporting (1988)
   b. Principles and Practices of Industrial Hygiene (1990)

2) University of Arkansas, Little Rock, Arkansas
   a. Hazard Communication Standard (1988)
   b. Joint Safety and Health Committees (1989)
   c. Local Union Safety and Health Committees (1989)
   d. Right to Know SARA Title III (1989)
   e. Accident Investigation (1990)
   f. Asbestos in the Work Place (1990)
   g. Train the Trainer Parts 1 & 2 (1990 & 1991)
   h. Basic Industrial Hygiene (1991)

3) Jackson State University, Jackson, Mississippi
   a. OSHA Hazard Communication Training for the Trainer (1991)

4) National Safety Council Safety Training Institute
   a. Selling safety to Management (1989)
   b. Training Concepts for the Safety Trainer (1990)
   c. Compliance with the OSHA Lockout Tag out Standard (1992)
   d. Creating a High Energy Worksite: Collaborative Safety Leadership Techniques and Maximizing Worker Potential (1992)
   e. Executive Leadership in Safety and Health; Putting Safety and Health on senior management's Agenda (1994)
   f. Home Study Course; Protecting Workers Lives, Grade Average 97% (1994)
   g. Joint Safety & Health Safety Committee Course, and follow-up Course to become a course facilitator.
   h. First Aid Level 2 and CPR (adult-child-infant) (1995)

5) OSHA Training Course
   a. OSHA 10 hour construction course with cert. (1995)

Awards Related to Safety:

a. Outstanding Service to Safety Award 1990 - Presented by National Safety Council, Labor Division
b. Distinguished Service to Safety Award 1994 - Presented by National Safety Council, Labor Division
c. Recognition as Chairman, Labor Division National Safety Council, 1998 to 1999
d. Certificate of Appreciation 1997 Air Bag Safety Campaign – MS. State
e. Award of Recognition for Contributions as Board of Directors Member and Member Board of Delegates, National Safety Council

Miscellaneous:

While a member of the Safety Training and Education Committee with the Labor Division of the National Safety Council, I have had the privilege to help rewrite the book and home study course, "Protecting Workers Lives", as well as helping write the labor management course, "Joint Labor/Management Safety Committees". I have at other times been called upon by the National Safety Council to review other training manuals for accuracy, and then make comments. Recommended for membership in American Society of Safety Engineers (June 1995). Helped form and signed as a partner in the Safety Alliance Between two Regions of OSHA, two Metal Trades Councils, and Northrop Grumman Ship Systems, Avondale Operations and Ingalls Operations

My total experience in Safety and Health and Safety/Health, Labor Management Relations, Human Resources, Collective Bargaining, and the Building of Alliances for the betterment of Labor and Industry and related fields is 33 plus years.

Barbara McCabe
Program Manager
National Training Fund/National HAZMAT Program
International Union of Operating Engineers

Positions and Employment

1999-Present Program Manager, IUOE National Training Fund – National HAZMAT Program, Beaver, WV

Program Administrator/Principal Investigator for multi-million dollar cooperative agreements and grants for National Institute for Environmental Health Sciences (NIEHS) Worker Education Training Program, Energy Security and Reliability and OSHA Susan Harwood Disaster Response and Recovery. Manages programs, training, and support personnel. Program Administrator/Principal Investigator for multi-million dollar cooperative agreement completed in 2002, to conduct Human Factors Assessments of emerging environmental restoration, decontamination, and decommissioning technologies. Identifies and develops new areas for training and oversees the administrative functions associated with grant applications, proposal submittals, budget, program reporting, contractor oversight, et cetera. Responsible for all cooperative agreement and grant reports and deliverables. Responsible for budget development and oversight for all programs and facility operation. Consults with staff and local unions on technical safety and health issues.

1995-1999 Industrial Hygienist, IUOE National HAZMAT Program, Beaver, WV
Developed and implemented protocols for human factors assessments and mitigation strategies for health and safety concerns. Managed all hazard analysis to be conducted during the human factors assessment of emerging environmental restoration, decontamination, and decommissioning technologies, including conducting field assessments and development of Technology Safety Data Sheets (TSDA). Provided consultation services on safety and health issues for construction (heavy equipment operators) and stationary (building engineers) local unions.

1991-1995 Industrial Hygienist, EG&G-TSWV, Inc., Morgantown, WV
Developed and managed comprehensive industrial hygiene program and SARA Title III Community Right to Know Program. Industrial Hygiene oversight on construction jobs and clean coal research projects, including air sampling, noise monitoring, recommendations for PPE, and resolution of training issues. Coordinator for the Emergency Medical Response of the DOE FETC site Emergency Response Team. Conducted site monitoring programs for noise, air contaminants, heat stress, respiratory protection program, ergonomic evaluations, etc. Developed, and trained site employees in all aspects of safety and health.

1985-1991 Systems Analyst, EG&G-TSWV, Inc., Morgantown, WV
Managed the medical database, medical emergency services, Hearing Conservation, and Employee CPR Program. Conducted all hearing conservation and CPR/first aid training for on-site personnel.

1982-1987 Industrial Audiologist (consultant), Monongalia General Hospital, Morgantown, WV

Provided contract services for audiometric testing for hearing conservation program for Maintenance Department employees.

1982-1984 Clinical Audiologist, Morgantown ENT Clinic, Inc., Morgantown, WV
Conducted all clinical audiometric testing, lesion site testing, and ENG. Supervised Audiology Graduate Students from West Virginia University

1980-1982 Clinical Audiologist, Charles E. Haislip, M.E., Fairmont, WV
Conducted all clinical audiometric testing, lesion site testing, and Electronstagmography (ENG). Supervised Audiology Graduate Students from West Virginia University

EDUCATION/TRAINING			
INSTITUTION AND LOCATION	DEGREE	YEAR(s)	FIELD OF STUDY
West Virginia University, Morgantown, WV	Bachelors of Science	1973-1977	Speech Pathology/Audiology
West Virginia University, Morgantown, WV	Masters of Science	1977-1979	Audiology
West Virginia University, Morgantown, WV	Masters of Science	1990-1995	Occupational Health and Safety Engineering

Other Experiences and Professional Memberships

1975 to present	Member American Speech-Language-Hearing Association
1979 to present	Certification of Clinical Competence in Audiology
1996 to present	Hazardous Waste Operations and Emergency Response Trainer
1997 to 2006	Member American Industrial Hygiene Association
2002 to 2004	Member of OSHA National Ergonomics Advisory Board (Board was established for two years only)
2007 to present	Member of OSHA National Advisory Committee on Occupational Safety and Health (2 year appointment)

Peer Reviewed Publications

B McCabe and B Lippy, "Long-Term Stewardship of the DOE Workforce: Integrating Safety and Health into the Design and Development of DOE Clean-up Technologies", *Environmental Science and Pollution Research*, Special Issue 1 (2001), pp 62-67, 2001. Internet address: www.scientificjournals.com/webeditions/espr.

B McCabe**, "**Technology Safety Data Sheets: A Tool to Protect Workers from the Hazards of Environmental Clean-up Technologies", TIE Quarterly, Vol. 9, Winter 2001.

RONALD AULT
President
Metal Trades Department AFL-CIO

Prior to being elected as the Metal Trades Department's President, Mr. Ault served for four years as a General Representative of the Department. A former organizer with the International Union of Operating Engineers and a former business representative for the International Association of Machinists and Aerospace Workers, Ault is a career Labor Representative with more than 30 years experience.

Mr. Ault served a four-year enlistment with the U.S. Navy, including a tour of duty in Vietnam (1968-69). Mr. Ault went to work at the Norfolk Naval Shipyard in 1971; he was hired as an apprentice Inside Machinist. Graduating as a journeyman Inside Machinist with honors four years later, Ault served in various union positions. From 1980 to 1985, he served as president of the Tidewater Virginia Federal Employees Metal Trades Council and the Chairman of the Conference Committee at NNSY in Portsmouth, Virginia. Ault served as Campaign Coordinator in the Metal Trades Department's successful drive for union recognition at the Avondale Shipyard in New Orleans and was the Chief Negotiator for the historic first union contract at the yard.

A native of Amity, Arkansas, Mr. Ault is married, the Father of four children and currently lives in Waldorf, Maryland.

Tom Schaffer
General Representative
Metal Trades Department AFL-CIO

- Served my apprenticeship for Iron Workers Local 67 in Des Moines, Iowa and graduated to journeyman level in 1974.

- Worked both as an Iron Worker and later in the manufacturing business at Artistic Manufacturing builders of many brands of church ware. I left the company in 1977 as plant manager and went back into construction.

- Moved to San Diego in 1978 and was employed as a journeyman Iron Worker in the construction industry.

- I was hired while in San Diego by Rockwell International who was then the Hanford Site contractor and started working at the Hanford Site in 1980 as an Iron Worker/Rigger.

- Was elected to the position of Secretary Treasurer of the Hanford Atomic Metal Trades Council (HAMTC) in 1994, and later served a dual role as Secretary Treasurer and HAMMER Union Liaison for the training facility for two terms.

- In 1999 I was elected as President of HAMTC and served two and a half terms.

- During my last term I was asked to join the Metal Trades Council's parent organization the Metal Trades Department AFL-CIO. I accepted and have served as a General Representative since September of 2003.

James Seidl
East Coast Representative
Metal Trades Department AFL-CIO

James Seidl is presently the East Coast Representative for the Metal Trades Department AFL-CIO.

- He served his apprenticeship with the US Naval Ordnance Station in Louisville, Kentucky as a Machinist.

- A veteran, served in the United States Army from 1957 to 1962.

- A forty-one year member of the International Association of Machinists and Aerospace Workers AFL-CIO, served as:
  - President,
  - Business Representative,
  - Grand Lodge Representative,
  - Director of the Government Employee's Department and,
  - Administrative Assistant to the Midwest Territory General Vice President.

- Retired from the Machinists Union in 2002, began working for the Metal Trades Department AFL-CIO in his current position as General Representative.

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Institution and Location	Degree	Date Conferred
University of North Carolina at Chapel Hill Department of Health Behavior and Health Education School of Public Health Chapel Hill, NC	Doctor of Public Health, Health Education and Behavior	2001
University of Cincinnati Department of Environmental Health College of Medicine Cincinnati, OH	Master of Science, Industrial Hygiene	1983
University of Cincinnati Department of Materials Science and Metallurgical Engineering College of Engineering Cincinnati, OH	Bachelor of Science, Metallurgical Engineering	1975

PROFESSIONAL EXPERIENCE

Institution/Organization	Position/Title	Dates
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)* Pittsburgh, PA	Senior Associate for Program Research and Development	September 2002 to present

* Prior to merger was Paper, Allied Industrial, Chemical and Energy Workers International Union (PACE)

[1] A joint project of the United Steelworkers and the Labor Institute located at: Health, Safety & Environment Department, USW, Five Gateway Center, Room 902, Pittsburgh, PA 15222

PROFESSIONAL EXPERIENCE

Institution/Organization	Position/Title	Dates
Paper, Allied Industrial, Chemical and Energy Workers International Union (PACE) Nashville, TN	Research and Evaluation Sub-contractor	September 1997 to 2002
Dept. of Health Behavior/Health Education School of Pubic Health University of North Carolina at Chapel Hill Chapel Hill, NC	Co-instructor	1997 & 1998
National Clearinghouse for Worker Health and Safety Education Bethesda, MD	Writer/Subcontractor	May – August 1996
Department of Epidemiology School of Pubic Health University of North Carolina at Chapel Hill Chapel Hill, NC	Research Assistant	May 1996-August 1996
National Institute of Environmental Health Sciences Research Triangle Park, NC	Research Assistant	May-Sept. 1995
United Rubber Workers International Akron, OH	Director of Industrial Hygiene	July 1993 - July 1994
International Chemical Workers Union Akron, OH	Industrial Hygienist and Project Director	July 1983 - July 1993

MANUSCRIPTS/PUBLICATIONS

McQuiston, T.H., Lippin, T.M, Bradley- Bull, K., Frederick, J., Wright, M. (2007) Beyond Texas City: The State of Process Safety in the Unionized U.S. Oil Refining Industry. Pittsburgh : USW. Participatory research project conducted with Anderson, J., Beach, J, Beevers, G., Frederic, R., Greene, T., Hoffman, T., Lefton, J., Motter, J., Nibarger, K., Renner, P., Ricks, B., Seymour, T., Taylor, R.

T., Cook, L., Gill, M.L., Howard D., Seymour, T.A., Stephens, D., Williams B.K. (2006) Chemical Plants Remain Vulnerable to Terrorists: A Call to Action, Environmental Health Perspectives, 114, 1307-1311.

Lippin, T.M, McQuiston, T.H., Bradley- Bull, K., Burns-Johnson, T., Cook, L., Gill, M.L., Howard D., Seymour, T.A., Stephens, D., Williams B.K. (2006) Chemical Plants Remain Vulnerable to Terrorists: A Call to Action, Environmental Health Perspectives, 114, 1307-1311.

McQuiston, T. H. (2000). Empowerment evaluation of worker safety and health education programs. American Journal of Industrial Medicine, 38, 584-597.

McQuiston, T. H. (2000). Empowerment evaluation of worker safety and health education programs. Doctoral Dissertation, School of Public Health, Department of Health Education and Health Behavior, University of North Carolina at Chapel Hill.

Dissertation Manuscripts:

McQuiston, T. H. (2000). A Process Evaluation of the Self-Sufficiency Research and Evaluation Pilot Project (UNC-CH, Dissertation: 37-68)

McQuiston, T. H. (2000). The Self-Sufficiency Research and Evaluation Pilot Project: A Case Study of One Union's Experience (UNC-CH, Dissertation: 69-109, 2000)

McQuiston, T. H. (2000). What SREPP Tells Us About a Theory of Participatory and Empowering Evaluation (UNC-CH, Dissertation: 113-125, 2000)

McQuiston, T. H. (2000). Participatory and Empowering Evaluation as a Disruptive Innovation (UNC-CH, Dissertation: 126-129, 2000)

Lippin, T. M., Eckman, A, Rubanowice-Calkin, K, McQuiston, T. H. (2000) Empowerment-based health and safety training: Evidence of workplace change from four industrial sectors. American Journal of Industrial Medicine, 39.

McQuiston, T. H., Zakocs, and R., Loomis, D., (1998). The case for stronger OSHA enforcement: Evidence from evaluation research. American Journal of Public Health, 88(7), 1022-1024.

McQuiston, T. H., Coleman, P., Wallerstein, N.B., Marcus, A. C., Morawetz, J. S., Ortlieb, D. W., and Hecker, S. (1997). Evaluating health and safety training: A case study in chemical workers' hazardous waste worker education. In J. Stellman (ed.), ILO Encyclopedia of Occupational Health and Safety. Brussels, Belgium:, International Labour Organization (18.12-18.13).

McQuiston, T. H. (1996). Multi-program Evaluation: A Descriptive Review of the National Institute of Environmental Health Sciences Hazardous Waste Worker Training Program. Research Triangle Park, NC: National Institute of Environmental Health Sciences.

McQuiston, T. H., Coleman, P., Wallerstein, N.B., Marcus, A. C., Morawetz, J. S., and Ortlieb, D. W., (1994). Hazardous waste worker education: Long term effects. Journal of Occupational Medicine, 36(12) 1310-1323.

Brown, E. R., McCarthy, W. J., Marcus, A. C., Froines, J. R., Baker, D. B., Dellenbaugh, C., & McQuiston, T. H. (1988). Workplace smoking policies: attitudes of union members in a high-risk industry. Journal of Occupational Medicine, 30(4).

Beaumont, J. J., Leveton, J., Goldsmith, R., Bloom, T. & McQuiston, T. H., (1987). Lung

cancer mortality and other causes of death among sulfuric acid exposed workers in the steel industry. Journal of the National Cancer Institute, 79(5) 911-921.

Brown, E. R., McCarthy, W. J., Marcus, A. C., Froines, J. R., Baker, D. B., Dellenbaugh, C., & McQuiston, T. H. (1986). Workplace smoking policies - worker's attitudes and the roles of management and unions. Sociologie et Sociétés, October.

Marcus, A. C., Baker, D. B., Froines, J. R., Brown, E. R., McQuiston, T. H., & Herman, N. A. (1986). ICWU Cancer Control Education and Evaluation Program - Research design and needs assessment. Journal of Occupational Medicine, 28(3) 227-236.

McQuiston, T. H., Que Hee, S. S., & Saltzman, B. E. (1985). Lead exposure during the segments of the ladling cycle at a nonferrous foundry. Annals of Occupational Hygiene, 30(1), 41-49.

McQuiston, T. H., (1983). Characterization of Airborne Lead Exposure to a Ladle Operator in a Nonferrous Foundry. Unpublished master's thesis, University of Cincinnati, College of Medicine, Department of Environmental Health, OH.

PAPERS/PRESENTATIONS/COMMENTS

Cantrell, B., Catlin, M., McQuiston, T., Mock, A. (2004). Workers' roles in prevention, preparedness and response to intentional acts of terrorism and unintentional disasters. 132nd Annual Meeting of American Public Health Association, Washington, DC.

McQuiston, T. H., Lippin, T. M., Siqueira, E., Tornow, D. Thomason, D., Vazquez, L., Zamora, C. (1999). Worker Participation in Evaluation and Planning for Safety and Health Training. 127th Annual Meeting of American Public Health Association, Chicago, IL

Lippin, T. M., McQuiston, T. H., Westmoreland, R., Thomason, H., Orlando, S., Kirkpatrick, P. (1999). Introduction to a Participatory Evaluation Model: Building Your Program's Capacity to Learn. National Conference on Workplace Safety and Health Training. October 1999. St. Louis, MO.

George Meany Center for Labor Studies and the National Institute of Environmental Health Sciences' National Clearinghouse for Worker Health and Safety Education. (1998). Resource Guide for Evaluating Worker Training. (McQuiston, T. H. contributor). Bethesda, MD: George Meany Center.

McQuiston, T. H., (1996). Multi-program Evaluation: A Descriptive Review , National Institute of Environmental Health Sciences, Hazardous Waste Worker Training Program (Unpublished paper), Research Triangle Park, NC.

McQuiston, T. H., Marcus, A. C., Coleman, P., and Morawetz, J. November 1991. Preliminary Findings from a Twelve-month Follow-up Survey of Hazardous Waste Worker Trainees . Paper presented at the 119th Annual Meeting of American Public Health Association, Atlanta, GA.

Wallerstein, N. B., Cohen, J., Sullivan, C., Weinger, M., & McQuiston. (1989). Skill Building Workshop on Popular Education/Empowerment Education. Presented at the 117th annual meeting of American Public Health Association, Chicago, IL.

Marcus, A. C., McQuiston, T. H., Brown, E. R., Herman, N. A., & Froines, J. R., (1987). Final results from ICWU Cancer Control Education and Evaluation Program. Paper presented at the 115th annual meeting of the American Public Health Association, New Orleans, LA.

Mooser, S., and McQuiston, T. H., (October 1987). Worker Education for Safety and Health: Train the Trainers Program, Roundtable at the at the 115th annual meeting of the American Public Health Association, New Orleans, LA.

COMMENTS ON FEDERAL STANDARDS.

OSHA - Revision of the Air Contaminants - Permissible Exposure Limits (1910.1000)

OSHA - Hazardous Waste Operations and Emergency Response (1910.120)

OSHA - Proposed Rule: Accreditation of Training Programs for Hazardous Waste Operations (1910.121)

OSHA - Process Safety Management of Highly Hazardous Chemicals (1910.119)

MEMBERSHIPS/BOARDS/COMMITTEES

2001 to present	Member Delta Omega (Public Health Honor Society)
1987 to present	Member, Occupational Health Section, American Public Health Association
1992 to present	United Association for Labor Education, Workers Education (Local 189), Communication Workers of America
1996 to 1998	Member, Advisory Board, Partnership Effort for the Advancement of Children's Health, North Carolina Central University and North East Central Durham Community
1992	National Institute of Environmental Health Sciences, Committee on Prevention Research
1990 to 1993	Executive Committee Member, National Clearinghouse on Occupational and Environmental Health

Gerald Ryan

Director, Training, Health & Safety
Operative Plasterers' and Cement Masons' International Association

Gerald Ryan serves as Director of Training, Health & Safety for the Operative Plasterers' and Cement Masons' International Association, where he works to deliver programs that inform, train, and protect workers in the construction industry, particularly cement masons and plasterers.

In his thirty years as a third-generation cement mason, Mr. Ryan witnessed first-hand the hazards of the jobsite. When an on-the-job injury ended his ability to work with the tools of the trade in 1992, he became an instructor at his local, helping other workers prevent the same types of injuries he had seen and experienced. He helped set up the Minnesota, North Dakota, Northwestern Wisconsin Cement Masons' Local 633 Apprenticeship & Training Center, and then managed the expansion of the center's training programs from 1996 to 2002.

Since 2002, he has been Director of Training, Health & Safety for the Plasterers' & Cement Masons' International, where he has led a team of instructors in publishing updated plastering and cement masonry curricula, training publications addressing job hazards specific to cement masons - such as silicosis and contact dermatitis - and myriad other training initiatives designed to reach the both the apprentice and the experienced journeyman, ensuring their safety on the job.

Gerry remains directly involved with Safety and Health for his International's members by offering OSHA 500 training courses to increase the number of OSHA trainers available to his International along with numerous other training programs being conducted across the country for their membership.

He also encourages instructors to network with each other in sharing training information and resources. He has worked closely with his Louisiana and Gulf Coast Locals to help them renew their apprenticeship programs following the devastation of Hurricanes Katrina and Rita.

He recently worked with the National Labor College to create a program that will allow OPCMIA instructors to earn a Certificate in Labor Education. This new program gives instructors the opportunity to earn college credit while improving their teaching skills and - most importantly - while serving their Local members.

Today, Gerry continues to work with Plasterers' and Cement Masons' Locals to set-up, improve, and expand their apprenticeship training programs, journeyman upgrade training opportunities, and safety and health training while administering combined DOE and EPA grant funds.

Doug Stephens
Project Manager/Coordinator
Grant Health & Safety Field Operations
United Steelworkers International Union/Nashville Office

Employed with Lockheed Martin at the Oak Ridge Gaseous Diffusion Plant for 30 years as a maintenance mechanic, and was also president of Local 3-288 of the Oil Chemical and Atomic Workers International Union (OCAW).

Attended an OCAW/NIEHS Grant sponsored Train the Trainer class in 1993 and began delivering 29 CFR 1910.120 training to the employees of Lockheed Martin in a Department of Energy nuclear facility.

Served as Vice President of the Tennessee AFL-CIO State Labor Council from 1987 to 1997.

Worked with the Oil Chemical and Atomic Workers International Union (OCAW) in Denver, Colorado as Grant Administrator for the Department of Energy Hazardous Waste Operations and Emergency Response Grant from 1997 until the merger in 1999 between the OCAW and the United Paperworkers International Union (UPIU).

Moved to Nashville, TN in 1999 to become the Associate Director of Health and Safety with responsibility of the NIEHS Grants Programs.

Currently, Project Manager and Coordinator of Grant Health and Safety Field Operations for the United Steelworkers International Union's Nashville Office.

Joseph Thomas (Chip) Hughes, Jr.
Director, Worker Education and Training Program
DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health

EDUCATION:

1974, B.A., College of the Holy Cross, Worcester, Massachusetts
1982, M.P.H., School of Public Health, University of North Carolina, Chapel Hill, North Carolina

EXPERIENCE:

1998-present	Director and Branch Chief, Worker Education and Training Program, National Institute of Environmental Health Sciences
1990-1998	Program Administrator, Worker Education and Training Program, National Institute of Environmental Health Sciences
1988-1989	Research Director, Clean Water Fund of North Carolina
1987-1988	Coordinator, Utilities Campaign, North Carolina Fair Share
1984-1987	Executive Director, East Coast Farmworker Support Network
1981-1982	Pesticides Project Coordinator, Farmworkers Legal Services Corporation
1980-1981	Consultant, Center for Work and Mental Health, National Institute of Mental Health
1979-1981	Researcher, US Department of Labor, Division for Policy, Evaluation and Research
1977-1979	Director of Education & Training, Carolina Brown Lung Association (CBLA)
1975-1977	Fellow, John Hay Whitney Foundation Research Director, Institute for Southern Studies

HONORS AND AWARDS:

NIH Quality of Worklife Award, 1999

NIH Director's Award, 2000, 2001, 2003, 2004, and 2006

HHS Secretary’s Award for Heroism and Exceptional Service, 2001

HHS Secretary’s Award for Distinguished Service, 2002 (World Trade Center disaster response)

HHS Secretary’s Award for Distinguished Service, 2006 (Katrina disaster response)

Deborah Weinstock

Director, National Clearinghouse for Worker Safety and Health Training

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Deborah Weinstock joined MDB, Inc. in 2005 as the Director for the NIEHS National Clearinghouse for Worker Safety and Health Training. Deborah comes to MDB, Inc. with twelve years of experience in the safety and health field. Prior to joining MDB, she spent seven years as an Occupational Safety and Health Specialist in the AFL-CIO Department of Occupational Safety and Health. Deborah has experience working with a variety of government agencies and departments, including, the Department of Energy, the Environmental Protection Agency and the National Institute of Environmental Health Sciences. Deborah holds a B.A. degree in Art History from the University of Maryland and an M.S. in Applied Behavioral Sciences from Johns Hopkins University.

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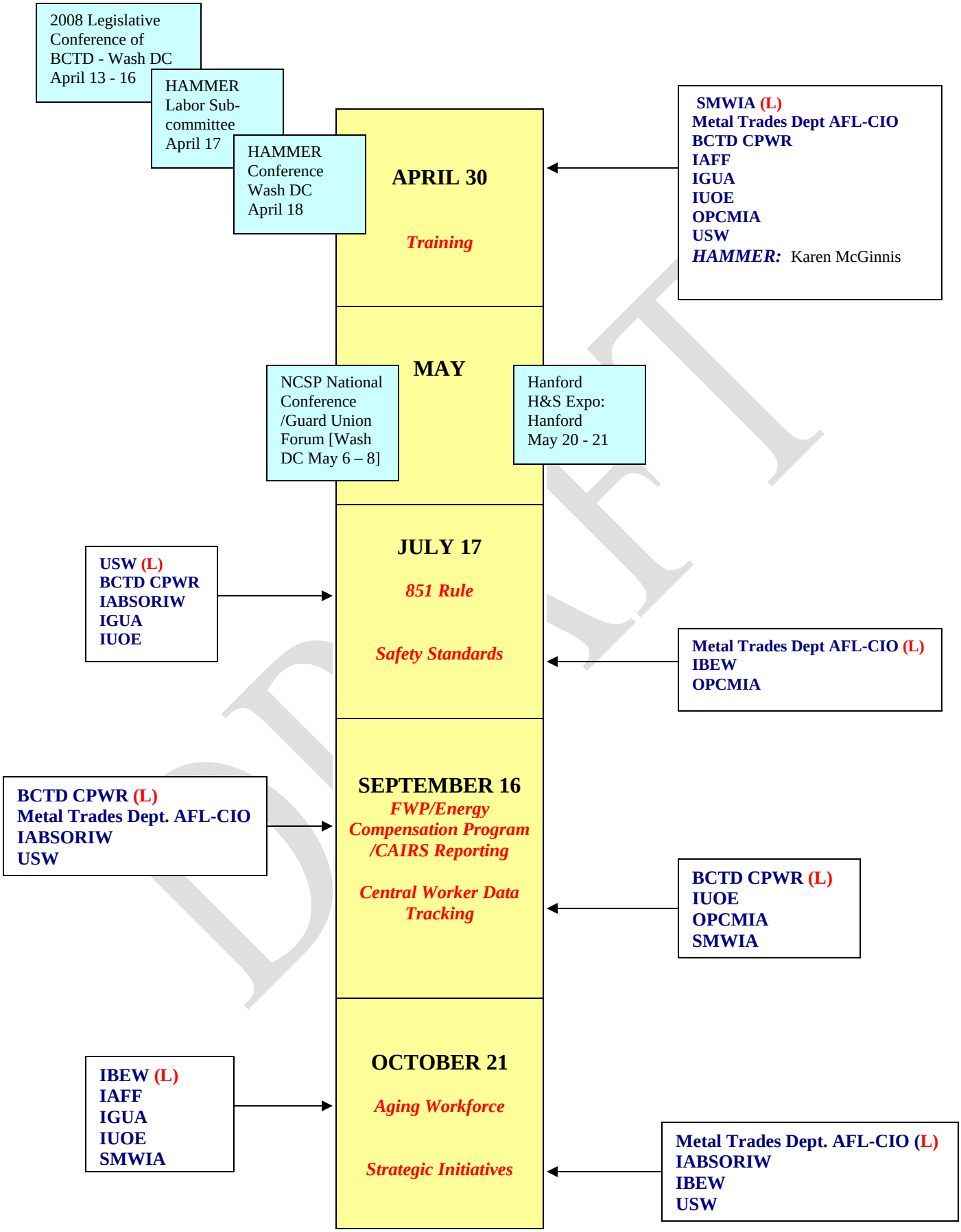
Karen A. McGinnis
Director
HAMMER Training and Education Center

Karen McGinnis is the only director the Volpentest HAMMER Training and Education Center has ever known. Since 1991, Karen has guided HAMMER to its status as an industry-recognized leader in industrial training featuring one of the most multi-faceted training facilities in the world. Karen's crowning achievement is her oversight in establishing the many partnerships forged through HAMMER. These relationships – made up of organized labor, federal and state agencies, tribes, safety professionals and community leaders – prompted AFL-CIO Chairman John Sweeney to remark that HAMMER represents "one of the most important partnerships in the country." Under Karen's leadership, HAMMER has gained recognition as one of the premier training centers in the world while also achieving the top federal safety award of Voluntary Protection Program (VPP) Star Status. Karen also received a "Special Achievement Award" for outstanding Performance Leadership in furthering the US DOE VPP program. Karen has a Master of Arts, Agriculture and Natural Resource Economics, Washington State University (February 1980) and a Bachelor of Science, Agriculture and Natural Resource Economics, Oregon State University (June 1974).

HSS /Labor Union
2008 Topical and Union Related Meeting Schedule



06-18-08 Revised Draft

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Chief Health, Safety and Security Officer, Glenn Podonsky…… 202-586-9275
Deputy Chief for Operations, Michael Kilpatrick……..202-586-4399
Deputy Chief for Operations, Russell Shearer……202-586-6151
Senior Advisor to Chief HSS, Mari-Jo Campagnone…….301-903-7053

Direct Reports to the Chief Health, Safety and Security Officer

Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board:
Provides effective cross-organizational leadership in resolving Defense Nuclear Facilities Safety Board (DNFSB)-related technical and management issues necessary to ensure public health and safety.
Director: Mark Whitaker……202-586-3887

Office of Resource Management: Supports the infrastructure of HSS by providing balanced, unbiased, technically competent, and customer focused services in the areas of: (1) Financial Management, including budget formulation and execution; (2) Procurement Management, including contract and credit card programs; (3) Information Management, including technology-based solutions and programs; (4) Quality Assurance; (5) Human Resources, including recruitment and retention programs; (6) Administrative Services, including property management, travel, and work space management; and; (7) Strategic and Program Planning including performance and efficiency measures.
Director: Lesley Gasperow……..202-586-2775

Office of Security Operations: Strengthens the national security by protecting personnel, facilities, property, classified information, and sensitive unclassified information for DOE Headquarters facilities in the National Capital Area under normal and abnormal (i.e., emergency) conditions; managing access authorization functions; ensuring that executives and dignitaries are fully protected, and supporting efforts to ensure the continuity of government in all circumstances as mandated by Presidential Decision Directive. The Office is the database owner for the principal personnel security information processing activities of the Department and personnel security administrative review process.
Director: Robert Lingan…….....202-586-3345

Office of Departmental Personnel Security: Serves as the central leader and advocate vested with the authority to ensure consistent and effective implementation of personnel security programs DOE-wide. The Office will establish expectations for the DOE-wide personnel security program; establish mechanisms to assure timely, appropriate and consistent adjudication of clearances; develop quality assurance programs and processes for the personnel security program; develop and implement automation initiatives to enable DOE to meet OMB expectations for reducing clearance processing times; work with Office of Security Policy to identify needs for strengthening and improving personnel security and drug testing requirements in regulations and directives; work in partnership with the HSS National Training Center and the Chief Human Capital Officer to develop a training and certification program for all federal staff in the DOE-wide personnel security program. The Office will serve as DOE's single point of interface with the interagency personnel security community.
Director: Stephanie Brewer…….....202-586-3205

Office of Health and Safety: Establishes worker safety and health requirements and expectations for the Department to ensure protection of workers from the hazards associated with Department operations. Conducts health studies to determine worker and public health effects from exposure to hazardous materials associated with Department operations and supports international health studies and programs. Implements medical surveillance and screening programs for current and former workers and supports the Department of Labor in the implementation of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Provides assistance to Headquarters and field elements in implementation of policy and resolving worker safety and health issues.
Director: Patricia Worthington……301-903-5926

Office of Nuclear Safety and Environment: Establishes nuclear safety and environmental protection requirements and expectations for the Department to ensure protection of workers and the public from the hazards associated with nuclear operations, and protection of the environment from the hazards associated with all Department operations. Provides assistance to field elements in implementation of policy and resolving nuclear safety and environmental protection issues.
Director: Andy Lawrence…….202-586-6740

Office of Corporate Safety Analysis: Manages and promotes corporate safety and quality assurance programs and provide analysis of Department of Energy (DOE)-wide performance in protecting the public, the workers and the environment while performing the missions of DOE. This analysis is valued in corporate decision-making and synthesizes operational information to support continuous environment, safety and health (ES&H) improvement across the DOE complex. Seeks improvements in protection methods and provides feedback used to enhance safety and health policies.
Director: William Roege…..…..……301-903-8008

Office of Enforcement: Promotes overall improvement in the Department's nuclear safety, worker safety and health, and security programs through management and implementation of the DOE statutorily required enforcement programs.
Director: Arnold Guevara…….301-903-2178

Office of the National Training Center: Is the Department's Center of Excellence for Security and Safety Training and Professional Development, designs, develops, and implements state-of-the-art security and safety training programs for Department federal and contractor personnel nationwide, including the National Nuclear Security Administration (NNSA). NTC provides training based on technical qualification standards. As appropriate, NTC extends its services to other government agencies involved in protecting critical national security assets.
Director: Jeffrey Harrell…….505-845-5170 Ext 117

Office of Independent Oversight: Provides an independent assessment of the effectiveness of policies and programs in safeguards and security; cyber security; emergency management; environment, safety and health; and other critical functions of immediate interest to the Secretary, the Deputy Secretary, the Administrator of the National Nuclear Security Administration (NNSA), the Under Secretary for Energy, and the Under Secretary for Science. The office is organizationally independent of the DOE offices that develop and implement policy and programs and can therefore objectively observe Departmental operations, providing unbiased information to senior DOE managers using a systematic oversight process that emphasizes performance and performance testing.
Director: Bill Eckroade……...301-903-5781

Contact Information: Direct Reports to the Chief Health, Safety and Security Officer (cont)

Office of Security Policy: Maintains the Department of Energy's security integrity through the development and promulgation of safeguards and security policy for the protection of the National Security and other critical assets entrusted to the Department. The Office also manages DOE-wide activities for foreign national visits and assignments and determinations of foreign ownership, control or influence.
Director: Barbara Stone……..301-903-4642

Office of Security Technology and Assistance: Protects the Department's critical assets and national security by providing security expertise to assist Headquarters and field elements in planning site protection strategies and by coordinating with domestic authorities to provide safeguards and security technical assistance, technical systems support, and new technology development and deployment opportunities.
Director: Larry Wilcher…….301-903-5108

Office of Classification: Develops and interprets Government-wide and Department-wide policies, procedures and guidance, performs document reviews, and conducts training to ensure the accurate identification of information and documents that must be classified or controlled under statute or Executive order to protect the National Security, and controlled unclassified information (Official Use Only) to protect commercial and private interests and to provide for the effective operation of the Government.
Acting Director: Andy Weston-Dawkes……301-903-3526

HSS FUNCTIONAL AREA POINTS OF CONTACT

851 Rule Implementation
(Office of Health and Safety) - Pat Worthington/Bill McArthur……301-903-6061

851 Rule Enforcement
(Office of Enforcement) - Arnold Guevara/Kathy McCarty……301-903-0100

Corporate Safety Analysis - Bill Roege……301-903-8008

Environmental Policy and Assistance - Tom Traceski……202-586-6374

Former Worker Programs - Pat Worthington……301-903-5926

Independent Oversight - Bill Eckroade……301-903-5781

National Training Center (NTC) - Jeff Harrell……505-845-5170

HSS HAMMER Representative (NTC) - Jeff Harrell……505-845-5170

HSS Focus Group Liaison - Mari-Jo Campagnone……301-903-7053

HSS Chief of Staff - Steve Kirchhoff……202-586-3373

Office of Health, Safety and Security Website: http://www.hss.doe.gov
HSS Outreach Website: http://www.hssoutreach.energy.gov