

May 4, 2000

MEMORANDUM FOR DOE PAAA COORDINATORS
CONTRACTOR PAAA COORDINATORS

FROM: R. KEITH CHRISTOPHER
DIRECTOR 
OFFICE OF ENFORCEMENT AND INVESTIGATION

SUBJECT: Enforcement Guidance Supplement 00-01:
Enforcement Position Relative to the Discovery/Control of
Legacy Contamination

Section 1.3 of the *Operational Procedures for Enforcement*, published in June 1998, provides the opportunity for the Office of Enforcement and Investigation (EH-Enforcement) to periodically issue clarifying guidance regarding the processes used in its enforcement activities.

On November 24, 1999, I issued a memorandum providing interim clarification on the EH-Enforcement position on legacy radioactive contamination. That memorandum was issued in response to questions I had received regarding 10 CFR 835 (Occupational Radiation Protection) applicability and potential enforcement related to the discovery of legacy contamination in unposted and/or uncontrolled areas.

This Enforcement Guidance Supplement (EGS) provides more detail related to specific 10 CFR 835 requirements and applicability of those requirements. This EGS also discusses EH-Enforcement's planned level of enforcement discretion associated with legacy contamination incidents, as well as the limitations to the application of that discretion.

BACKGROUND

For the purposes of this EGS, legacy radioactive contamination is generally defined as radioactive contamination resulting from historical operations that is unrelated to current activities. Over the past year, I have received questions from various contractors related to the applicability of 10 CFR 835 to legacy contamination, particularly to its discovery in uncontrolled areas. Specifically, contractors have questioned whether such a discovery represents a noncompliance with 10 CFR 835 that could lead to a potential enforcement action. The general view advanced by contractors with whom I have communicated is that since the contamination is "legacy" and was spread during a previous contractor's activities, the discovery falls outside the scope of 10 CFR 835 and does not represent a noncompliance or a potential enforcement situation. I have also noted a mistaken perception among several contractors that as long as legacy contamination remains undiscovered, it creates a defense to enforcement action.

This perception is of particular concern, since it acts as a disincentive to implementing proactive and effective survey programs. As discussed below, enforcement discretion will only be applied in those instances where effective survey programs are in place.

10 CFR 835 APPLICABILITY

The concept of legacy or pre-existing contamination is neither defined nor discussed in 10 CFR 835 (both original and amended versions). No exclusions for pre-existing conditions (including legacy contamination) are contained in 10 CFR 835, Subpart A.

Consequently, the identification of *any* radioactive surface contamination (legacy or otherwise) above the applicable levels contained in 10 CFR 835, Appendix D, in an unposted and uncontrolled area typically represents a noncompliance with 10 CFR 835 requirements. The specific citations against 10 CFR 835 requirements would vary based on the circumstances of the discovery; however, the following specific sections of the amended 10 CFR 835 would generally be applicable:

- ◆ 835.603(e) - Requires that Contamination Areas (see 835.2 definition) be posted.
- ◆ 835.1102(b) - Requires that areas where contamination levels exceed Appendix D values be appropriately controlled.
- ◆ 835.1102(c) - Establishes control requirements for areas where fixed-only contamination levels exceed Appendix D values.

Such discoveries may also represent a noncompliance with 10 CFR 830.120 (Quality Assurance Requirements), depending upon circumstances and specific procedural requirements.

It should be recognized during evaluations of legacy contamination conditions that the 10 CFR 835 Appendix D values which trigger the above requirements are applicable to surface contamination conditions only. They do not apply to situations where an item or area is contaminated only in volume or by matrix (see Note 1 to Appendix D, also see 10 CFR 835 preamble comment on volumetric contamination at 58 FR 65475).

Consequently, the discovery of items incorporating legacy contamination by volume but not representing a surface contamination condition or hazard (such as contaminated flora, fauna, or some soils¹) would not typically represent a 10 CFR 835 noncompliance. Despite this 10 CFR 835 non-applicability, such environmental contamination conditions must be appropriately controlled; it should also be noted that the presence of environmental contamination may present other radiological hazards (such as direct radiation) that do require appropriate posting and control under 10 CFR 835.

¹ For the case of volume-contaminated soils, the applicability of the 10 CFR 835, Appendix D levels is based on the potential to disperse contamination from the area in excess of the Appendix D levels. If such a potential is likely, the area containing the soils should be posted and controlled as a Contamination Area. DOE relevant guidance is contained in Implementation Guide DOE G 441.1-9, Radioactive Contamination Control Guide (6/99) and Article 238.3 of the DOE Radiological Control Standard (7/99).

ENFORCEMENT DISCRETION

In recognition of the specific circumstances surrounding legacy contamination discovery events, EH-Enforcement does not typically plan to pursue enforcement for noncompliances identified in association with such. The application of this enforcement discretion, however, would be subject to all of the following conditions:

- ◆ An effective radiological survey program is in place and functioning.
- ◆ Appropriate and timely corrective actions (such as posting, effective area control, decontamination, etc.) are taken upon identification of the contamination.
- ◆ It is unreasonable to expect the contamination to have been identified earlier, either through implementation of the radiological survey program, the review of readily available historical information, or the prudent response to previous contamination incidents.

NTS REPORTABILITY

Contamination events (legacy or otherwise) should be screened and tracked in accordance with existing site PAAA Program procedures. Typically, simple discovery-type events would not meet NTS reporting thresholds and should be entered and tracked on contractor local PAAA tracking systems. For those contamination-related noncompliances meeting the thresholds of Table 3-1 or 3-2 of the EH-Enforcement *Operational Procedures* (June 1998), a report should be made to the NTS regardless of whether the contractor chooses to apply the term "legacy."

Enforcement Guidance Supplements will be incorporated into later revisions of the DOE Enforcement Handbook and will be made available on the Office of Enforcement and Investigation web page . If you have any questions regarding this guidance, do not hesitate to contact me or Tony Weadock of my staff at 301-903-0100.