

December 15, 1998

MEMORANDUM FOR DOE PAAA COORDINATORS  
CONTRACTOR PAAA COORDINATORS

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OFFICE OF ENFORCEMENT AND INVESTIGATION

SUBJECT: Enforcement Guidance Supplement 98-02:  
DOE Enforcement Activities where Off-site Transportation  
Issues are also Present.

Section 1.3 of the Operational Procedures for Enforcement, published in June 1998, provides the opportunity to the Office of Enforcement and Investigation to issue clarifying guidance from time to time with respect to the processes used in its enforcement activities. Recently several questions have arisen regarding the scope of Price-Anderson enforcement when transportation issues are directly or indirectly involved in an incident. These questions can be separated into two areas, (1) transportation issues that involve on-site transportation typically not regulated by the Department of Transportation (DOT), and (2) transportation issues that involve off-site transportation. This guidance addresses off-site transportation that is regulated by DOT and other state and federal agencies.

#### **RULE EXCLUSIONS FOR TRANSPORTATION**

Two substantive rules, 10 CFR 830 and 10 CFR 835 refer to transportation issues either in the Rule Exclusion Section or in the Rule Definition Section .

In the definition section of 10 CFR 830 (Nuclear Safety Management) [59 FR 15843 (April 5, 1994)], which encompasses 10 CFR 830.120 (Quality Assurance Requirements), the definition of nonreactor nuclear facility specifically excludes "...[t]ransportation of radioactive materials.... and their operations...". This exclusion applies to transportation operations only. Thus, enforcement of Quality Assurance (QA) Requirements would be limited to nuclear activities that involve the control of radioactive material in preparation for the transport, and in the receipt (if receipt is by another DOE contractor) of the material.

The Occupational Radiation Protection Rule (10 CFR 835), [63 FR 59662 (November 4, 1998)], does contain an exclusion that directly addresses transportation of radioactive materials. Section 835.1(b)(4) states that the requirements in Part 835

do not apply to radioactive material transportation as defined in this part. Section 835.2 defines Radioactive material transportation as:

...the movement of radioactive material by aircraft, rail, vessel, or highway vehicle when such movement is subject to Department of Transportation regulations or DOE Orders that govern such movements. Radioactive material transportation does not include preparation of material or packagings for transportation, monitoring required by this part, storage of material awaiting transportation, or application of markings and labels required for transportation.

## **GENERAL GUIDANCE RELATED TO TRANSPORTATION ISSUES**

One goal of DOE enforcement of the Rules is to assure that contractors are not encumbered by multiple and possibly conflicting regulatory requirements from different regulatory agencies with respect to nuclear safety. Thus, application of both the QA Rule and the occupational radiation protection rule are excluded with respect to all activities regulated by the Nuclear Regulatory Commission (NRC) or a State under an agreement with the NRC [See 10 CFR 830.2 and 10 CFR 835.1(b)(1)]. Further, as illustrated in the definition of nonreactor nuclear facility in 10 CFR 830.3, the Department did not seek overlapping authority with the DOT with respect to off-site transportation issues. Since DOE seeks to avoid overlapping regulation, its focus is limited to assuring that all relevant nuclear safety activities are regulated if they are outside the scope of NRC/State regulation or DOT regulation. Thus a distinction must be made between off-site transportation and transportation taking place in the normal cycle of on-site work processes at DOE sites or in preparation on site for off-site transportation.

DOE intends to limit its enforcement activity regarding transportation to materials that are on site either before or after off-site transportation. General guidelines used to determine the areas where enforcement of Rule nuclear safety requirements would apply are listed below:

- \$ DOE enforcement of Rules will not include areas regulated by other state or federal agencies.
- \$ Typically the enforcement of DOE Rule requirements will address the control and management of radioactive materials up to the point of release for off-site transportation. DOE enforcement would again address control and management of the material following the acceptance of the material after completion of off-site transportation unless the receiving site is regulated by another federal or state agency.

\$ Transportation of radioactive materials onsite would be subject to enforcement of all applicable Rule requirements. Such enforcement will be limited to areas directly related to nuclear safety.

The application of this enforcement guidance is further illustrated in several hypothetical examples provided in the attachment. It should be remembered that all decisions regarding investigations and enforcement actions are discretionary and that such decisions will always depend on the unique facts and circumstances pertaining to each case. Further, the Office of Enforcement and Investigation can only clarify the use of its own discretionary enforcement authority and the advice provided herein does not apply to other offices in DOE, such as operations and contracting offices.

This enforcement guidance will be incorporated into the Office of Enforcement and Investigation Operational Procedures for Enforcement and will be made available on the Office of Enforcement and Investigation web page (<http://tis-nt.eh.doe.gov/enforce/>). If you have any questions regarding this enforcement guidance, please contact me or Howard Wilchins of my staff at 301-903-0100.

## ATTACHMENT

### EXAMPLE 1

#### **Shipment of Incorrectly Identified and Packaged Radioactive Material to a Non-Qualified Contractor/Location.**

A shipment of classified materials containing radioactive materials is shipped, using a commercial shipper, by a DOE contractor (shipping contractor) to another DOE contractor for disposal. The disposal facility (receiving contractor) is not qualified or approved for handling radiological material. In characterizing the material for disposal, the shipping contractor did not identify the radiological material. Thus, the material was not identified on any documentation, including the shipping manifest, and was stored on the loading dock for two weeks without controls required by 10 CFR 835, including radiological posting. The receiving contractor accepted the shipment based on the manifest and inventory documents. Upon review of the contents of the shipment, the receiving contractor identified that radiological material was present in the shipment.

Under the facts discussed above, it is likely that the shipping contractor was in noncompliance with requirements of 10 CFR 835 for its activities, including identification and control of the radioactive material, at the DOE site and could be subject to enforcement sanctions. The commercial shipper would not be subject to DOE regulation and DOE would not, therefore, investigate its activities. While the receiving contractor under this hypothesis is a DOE contractor, this contractor was not knowingly or intentionally participating in a DOE activity that involved ionizing radiation, and therefore would not be subject to PAAA enforcement. In this case the shipping DOE contractor, would be responsible, under 10 CFR 835.3 (c), to take responsibility for the radioactive material from the receiving contractor and to remedy the situation.

### EXAMPLE 2

#### **An Accident Involving a Commercial Transportation Company Causes a Release of Radioactive Material**

A shipment of radioactive waste leaves a DOE site, where it was generated, destined for an approved DOE disposal site via a trucking company authorized to handle such material. The transporter is in conformance with all DOT regulations for shipment, including documentation, surveys, labels, markings, etc. Five miles from the disposal

site boundary, the transport is involved in an accident, resulting in a release of radioactive materials. The DOE prime contractor at the disposal facility administers the contract for transportation of radioactive wastes. The contract includes provision of drivers and maintenance of all tractors and trailers. All notifications required by DOE contracts and orders were properly made. The transport container, which is NRC certified, is both appropriate and approved for transporting the radioactive waste.

Under the facts described above, it appears that the DOE contractors performed in compliance with all DOE requirements. The transporter would not be subject to DOE requirements and DOE would work cooperatively with DOT in the recovery of material and in its investigation.

### **EXAMPLE 3**

#### **Incorrectly Characterized Radiological Waste Shipped to a Commercial Processing Facility**

A DOE contractor mischaracterized radiological waste and shipped it to a commercial processing facility using a commercial transporter. The commercial processing facility was regulated by an NRC agreement State. The DOE contractor's waste characterization process was a nuclear activity and the waste was nuclear, but the waste processing facility was licensed to process only low level radiological waste. The processing facility accepted the shipped waste based on the contents of the shipping manifest and inventory. During processing of the waste, the processing facility experienced a radiological release that exceeded the maximum level authorized by its license more than 20 times. In addition, numerous personnel received small unplanned uptakes of [radioactive material]. The state subsequently prohibited the processor from accepting any future shipments from the DOE site responsible for the shipments.

Under this scenario, it is likely that the shipping contractor was in noncompliance with requirements of 10 CFR 830.120 and 10 CFR 835 for its activities on the DOE site and therefore could be subject to enforcement sanctions. In particular, potential matters for investigation would include work processes, documentation, surveying, posting and labeling and training. The transporter would not be subject to DOE regulations. The processing facility also would not be subject to DOE enforcement since activities regulated by the NRC or an agreement state are excluded from application of 10 CFR 830 and 10 CFR 835.

### **EXAMPLE 4**

#### **On-Site Transportation of Radioactive Materials without Proper and Adequate Radiological Controls.**

A DOE contractor is transporting a shipment of radioactive contaminated material

between two DOE Facilities located on the same site. The radioactive material is not packaged in accordance with the applicable DOE Orders and the contractors procedures. During the transportation of material, some of the radioactive material leaked from the waste package and contaminated a section of the roadway on site.

Under this scenario, DOE enforcement would evaluate potential violations of 10 CFR 835, particularly Subparts K and L of the Rule. The focus of the enforcement evaluation would be potential deficiencies in compliance with administrative and design controls; and physical design features. If the material being transported involved nuclear material from a nuclear facility, then potential violations of the work control requirements of the 10 CFR 830.120 would also be included in any enforcement evaluation. The transportation operation, in and of itself, would not be the focus of an enforcement evaluation resulting from this scenario.