

March 25, 1998

MEMORANDUM FOR: DOE PAAA COORDINATORS
CONTRACTOR PAAA COORDINATORS

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

SUBJECT: Enforcement Guidance Supplement 98-01:
Duration of Investigations Conducted Pursuant to
10 CFR 820.21; Purpose of Transcript Requirements
Set Forth in 10 CFR 820.10 (d)

The DOE Enforcement Handbook (1087-95) provides the Office of Enforcement and Investigation with the opportunity to issue interim clarifying guidance occasionally with respect to the processes to be used in this office (see Section 1.3- Interim Enforcement Guidance). In particular, it is important to assist contractors and others on the relationships between the requirements of Part 820 and the Enforcement Policy, 10 CFR 820, Appendix A.

The main purpose of both the regulation and the Enforcement Policy is to assure the health and safety of the public and workers by fostering a disciplined safety culture across the DOE complex. It is clear that in many situations, that outcome is enhanced through the maximum use of informal processes which permit direct communications and prompt outcomes in the least intrusive manner. Further, this approach provides DOE managers in the field the opportunity to continue rigorous facility and activity management during the course of an investigation and an enforcement action.

Based on the last three years of experience by the Department, it is clear that management of corrective actions by operations offices is enhanced by continued jurisdiction of the Office of Enforcement and Investigation until corrective actions associated with a noncompliance or enforcement action are closed. Thus, even in factual circumstances where a Preliminary Notice of Violation (PNOV) or a Final Notice of Violation has been released, the Office of Enforcement and Investigation retains jurisdiction of a matter until it is informed by the field that corrective actions have been completed to DOE's satisfaction.

In such circumstances, the informal processes identified in 10 CFR 820.8, 820.11, 820.21, and 820.22 are available to the Department to assure an exchange of information focused on solving the nuclear safety problem that

forms the nexus of the noncompliance/violation. For example, these sections allow DOE to obtain information or evidence for an investigation or to support any decision required by Part 820, obtain such information in a manner deemed appropriate by the Director, and to conduct an informal enforcement conference for the exchange of information. Such informal information exchange processes are also encouraged in the Enforcement Policy.

A question has been raised about the relationship between these sections of Part 820 and 10 CFR 820.10 (c), which states the following in part:

Except as otherwise provided in this part, after the filing of a Preliminary Notice of Violation, all hearings, conferences, and other meetings in the enforcement process shall be transcribed verbatim. (underline added)

The purpose of 820.10 (c) is to assure that no ex parte communications take place between Department decision makers and regulated contractors without being made part of the public record. Such decision makers include, for example, the Secretary, the Deputy Secretary, and the Assistant Secretary for Environment, Safety and Health. The requirement of transcripts in such circumstances enhances the integrity of the Price-Anderson enforcement process with the public and in the court system, in the event of an appeal from a final agency order or a trial de novo. Part 820.10 (c) only applies to Department activities in a narrow portion of the enforcement process, such as those instances subsequent to the issuance of a PNOV when DOE decides to conduct a meeting to negotiate resolution of an enforcement proceeding. Part 820.10 (c) was not intended to prevent or interfere with the normal management process involved in a corrective action program, such as information exchanges between DOE Field Office personnel and the contractor, nor does it prevent normal information gathering and investigatory activity in the manner deemed appropriate by the Office of Enforcement and Investigation. Should a contractor decide to withhold relevant information in the investigatory process, DOE will exercise its authority pursuant to 10 CFR 820.8 to obtain such documentary or testimonial evidence. Among other things, this authority includes the issuance of subpoenas, compelling testimony, sequestration of witnesses, and controlling dissemination of any record of testimony taken in a Price-Anderson investigation.

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 (<http://tis-nt.eh.doe.gov/enforce/>). If you have any questions regarding this enforcement guidance, please do not hesitate to contact me or Howard Wilchins of my staff at 301-903-0100.

cc: P. Brush, EH-1
Docket Clerk, EH-10