



Enforcement Guidance Supplement
EGS: 00-04
Appendix E- *Operational Procedures
for Enforcement*

Department of Energy
Washington, DC 20585

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MEMORANDUM FOR: DOE PAAA COORDINATORS
CONTRACTOR PAAA COORDINATORS

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SUBJECT: Enforcement Guidance Supplement 00-04:
Factual Bases for Issuing Consent Orders Pursuant to
10 CFR 820.23 and Compliance Orders Pursuant to
10 CFR Subpart C

DOE's Operational Procedures for Enforcement (June 1998), which supercede the DOE Enforcement Handbook (1087-95), provides the Office of Enforcement and Investigation with the opportunity to issue interim enforcement guidance from time to time with respect to processes to be used in this Office (see Section 1.3. Interim Enforcement Guidance). In particular, it is important to provide contractors and others with explanations on how certain procedural mechanisms provided in Part 820 are utilized to fulfill the mandate of the Price-Anderson Amendments Act (PAAA).

One of the main tenets of the Price-Anderson enforcement program is to encourage contractors to be aggressively pro-active in their efforts to assure the health and safety of workers and the public. Thus, 10 CFR 820.23 (a) provides an opportunity to settle nuclear safety violations with a Consent Order if that settlement is consistent with the objectives of the statute and DOE nuclear safety requirements. The purpose of this enforcement guidance supplement is to provide a clearer basis to contractors regarding the factual circumstances that will permit a resolution of an investigation by Consent Order.

As described in 10 CFR 820.23, a Consent Order is an agreement signed by DOE and a contractor. It acknowledges in summary form the breadth of a contractor's investigation of the subject violation, as well as the comprehensive corrective actions developed and implemented as a result of the findings set forth in the investigation. It reflects DOE's conclusion that the contractor's investigation was appropriately aggressive and comprehensive and was focused on finding sitewide solutions to the subject nuclear safety problem. It also reflects the DOE conclusion that the corrective actions proposed were appropriate and timely and, when fully implemented, will resolve

the nuclear safety problem. Finally, it reflects DOE's conclusion that there is a management commitment at the highest levels of the contractor organization that nuclear safety issues will be anticipated and addressed before the health and safety of workers and the public are compromised.

Further, the willingness of DOE to enter into a Consent Order represents a conclusion, developed over time, that confidence in the contractor's ability and commitment to implement nuclear safety in its activities is warranted. It is only on this basis that DOE concludes that it will refrain from an independent investigation and will rely on the results of the contractor investigation. The text of a Consent Order may set forth these elements as a prerequisite to findings to which the parties agree and will also, where appropriate, stipulate a sum to be paid in lieu of a civil penalty.

There are several benefits resulting from use of a Consent Order. First, since it is a reflection of confidence in a contractor's efforts, the public perception tends to be a positive one and this benefits both DOE and the contractor. Second, it permits DOE, when factual circumstances permit, to reduce the level of resources required to bring an investigation to a suitable conclusion. This permits the Department to focus more of its resources on contractors that are less forthcoming either in their level of cooperation or in their commitment to nuclear safety.

There are additional benefits to the contractor as well. It avoids the demands of a full DOE investigation, as well some of the financial consequences of the Major Fraud Act when a full investigation is commenced. Matters can be resolved more expeditiously as well. Further, it is an indication that the contractor has the capability to aggressively uncover and fix problems, while reporting and involving the Department at an early stage. This is an expectation that DOE has for all of its contractors. Finally, the issuance of a Consent Order may not require an admission on the part of the contractor that a nuclear safety requirement has been violated.

The factual circumstances that justify the issuance of a Consent Order may be contrasted with those supporting issuance of a Compliance Order. As set forth in 10 CFR 820.41, the Secretary of Energy may issue a Compliance Order in any circumstance involving a nuclear activity. The Order--

- (a) Identifies a situation that violates or potentially violates, or otherwise is inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement;
- (b) Mandates a remedy or other action; and,
- (c) States the reasons for the remedy or other action.

Thus, issuance of a Consent Order is a reflection of DOE's confidence in the ability of a contractor to anticipate, identify and resolve nuclear safety problems in a timely manner, while issuance of a Compliance Order reflects a conclusion at the highest levels of DOE that a contractor has failed to anticipate, identify and resolve such problems.

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Compliance Orders issued pursuant to 10 CFR 820, Subpart C, will be considered in circumstances where a safety problem is of such immediate magnitude that it requires undiluted, focused attention by the contractor or in circumstances where repeated efforts by DOE to assure completion of appropriate corrective actions by the contractor to resolve safety problems have failed.

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