

CHAPTER 3 - EVALUATION AND INVESTIGATION OF POTENTIAL VIOLATIONS; CONDUCT OF ENFORCEMENT CONFERENCES

3.1. Scope of the Chapter

This chapter provides guidance on the evaluation and investigation of potential violations, and the use of enforcement conferences. Guidance on preparation of enforcement actions is provided in Chapter 4.

3.2. General Overview of Enforcement Process

The steps in the enforcement process are outlined below. Although it is important to issue enforcement actions as promptly as possible, there may be circumstances in which the magnitude and/or complexity of a matter and the need for thoroughness may unavoidably delay the conclusion of an investigation. Consistent with DOE policy that permits settlement of enforcement proceedings at any time, the Director and the contractor can meet at any stage of the process and reach a settlement. Such a settlement can be set forth in a Consent Order (see 10 CFR 820.23). If the Consent Order is signed before the commencement of an enforcement adjudication, it is final upon signature by the affected parties and the Director. If a Consent Order is signed after commencement of an enforcement adjudication, it will be final upon completion of the processes set forth in 10 CFR 820.23.

Enforcement Process Steps

- a. Evaluate potential noncompliances reported in the NTS or identified from other sources, and complete the Noncompliance Review Form to document evaluation.**
- b. Determine whether to initiate an investigation based on results of an NTS Report evaluation, considering safety significance and other related factors. This decision will usually involve interactive discussion with Enforcement Specialists in the Office of Enforcement and Investigation and PAAA Coordinators in both Program and Field Offices.**

- c. Conduct an investigation of a potential or alleged violation and prepare an investigation report.**
- d. Determine whether there is a specific violation and, if so, identify the specific violation.**
- e. Decide whether or not to proceed after an assessment of investigation findings on safety significance, related factors, severity level and potential civil penalty, as appropriate.**
- f. Conduct an enforcement conference initiated by the Director or upon reasonable request by the contractor against whom the enforcement action is being considered.**
- g. Reevaluate whether the matter constitutes a noncompliance which merits preparation of an enforcement action. As appropriate, an Enforcement Letter may be issued.**
- h. Where warranted, the Director recommends issuance of a PNOV, with or without civil penalty. Other proposed remedies may be set forth to correct the violation.**
- i. The contractor responds in writing within 30 days and may contest the PNOV with substantive evidence not previously considered, contest the civil penalty, if applicable, or waive the right to contest.**
- j. The Director is responsible for a determination on the matter, based on the entire evidence of record. As applicable, this includes issuance of an FNOV, civil penalty and other remedies to correct the violation. If uncontested, the PNOV automatically becomes an FNOV.**
- k. An FNOV becomes a Final Order 15 days after service, unless modified by an order from the Secretary. PNOVs with a civil penalty become a Final Order if the contractor does not contest the Notice within 30 days, pays the civil penalty and performs the other remedies set forth in the PNOV.**
- l. The contractor may request an on-the-record adjudication of an FNOV and Civil Penalty. This request will initiate a PAAA adjudication with an Administrative Law Judge appointed by the Secretary to serve as presiding officer. Alternatively an action can be commenced in Federal District Court. Responsibility for prosecuting matters in Federal District Court will be coordinated with the DOE GC and the U.S. DOJ. (The PAAA adjudication process is set forth in 10 CFR 820, Subpart B, and will not be discussed further in this enforcement procedure).**

3.3. Identification of Nuclear Safety Noncompliances

Conditions that are not in compliance with nuclear safety requirements may be identified through various activities and sources, including the following:

- a. Information reported by contractors in DOE's NTS;
- b. Formal inspections or assessments by the contractors, DOE Field Offices, or the Office of Environment, Safety and Health;
- c. Reports from DOE field personnel and EH site representatives;
- d. Information provided by the DOE Office of Inspector General (IG);
- e. Allegations communicated to DOE from outside the organization;
- f. Media reports of nuclear activities;
- g. Congressional inquiries;
- h. Defense Nuclear Facilities Safety Board (DNFSB) inquiries or reports; and
- i. Information from other agencies, including the Nuclear Regulatory Commission, Department of Labor, Department of Transportation or state and local officials.

It is anticipated that the primary source of such information will be the contractors themselves since 10 CFR 820, Appendix A, provides positive incentives for the prompt identification and reporting of all potential nuclear safety violations. The primary vehicle that will be used by contractors for self-reporting is the NTS that is maintained by DOE. Guidance on contractor self-tracking and reporting through NTS is provided in a separate operational procedure, Identifying, Reporting and Tracking of Nuclear Safety Noncompliances Under Price-Anderson Amendments Act of 1988. That procedural document also provides the criteria for a contractor self-tracking process and the use of threshold criteria for reporting only the most safety significant noncompliances into the NTS if a contractor implements an appropriate self-tracking process.

For noncompliances that are identified by DOE or other sources external to the contractor, in general DOE expects these sources either to communicate or refer

the matter directly to the contractor for placement into the NTS. The contractor reporting into NTS will include a summary of the noncompliance, duration since occurrence, corrective actions, and other information related to the noncompliance to support DOE's review to make an initial determination of safety significance. Guidance on DOE's review of the contractor's NTS reports is provided in the following section.

Matters that constitute a significant regulatory concern which could involve high or potential impact on the public or workers are categorized as Severity Level I or II violations. Severity Level III violations involve events or activities that have the potential to result in localized impact on workers or the environment. They are less serious, but of more than a minor concern. They will be monitored to determine whether, in aggregate in discrete areas, they could lead to more serious problems. In such circumstances, they will be escalated for enforcement purposes. When a Severity Level I, II or III violation has occurred, the contractor will be required to respond within a stipulated period of the occurrence, describing any corrective actions taken to prevent recurrence and stating the date by which all the corrective actions will be complete.

It should be noted that although the following sections refer to the identification, documentation, and significance of violations, the use of the term "violation" in the context of these sections refers to "potential violations" of DOE nuclear safety rules or other PAAA enforceable nuclear safety requirements. A matter is only a violation after an investigation, development of information on relevant facts, and the rendering of a conclusion through the issuance of a PNOV. The terms "noncompliance" and "violation" are essentially interchangeable in that both terms connote a failure to comply with an applicable nuclear safety requirement. In general, DOE will use the term "noncompliance" for those matters in which the contractor has identified a condition that does not comply with nuclear safety requirements. Noncompliances having the requisite safety significance, as determined by DOE, will be subject to Notices of Violation and, if appropriate, civil penalties. Isolated minor noncompliances involving minimal or low safety significance will not be subject to enforcement actions but will be subject to periodic review, such as to identify recurring noncompliances.

3.4. Preliminary Evaluation of Noncompliances

DOE's Office of Enforcement and Investigation is responsible for reviewing noncompliance reports for consideration of more comprehensive investigation and potential enforcement action. The objectives of the review follow:

- a. Review of the facts contained in the available information to confirm that a DOE nuclear safety requirement has actually been violated.
- b. Development of an initial evaluation of the safety significance of the

noncompliance to determine if a more comprehensive investigation is warranted.

This evaluation is to be performed for NTS reports that are above the minimum thresholds established in Identifying, Reporting and Tracking of Nuclear Safety Noncompliances Under Price-Anderson Amendments Act of 1988, and any other cases identified by DOE and deemed of interest by the Director. For those NTS reports above the threshold, and other noncompliance conditions that are judged to be potentially safety significant, DOE should perform an evaluation using the "Noncompliance Review Form" in Appendix B to this enforcement procedure.

The evaluation and preparation of the Noncompliance Review Form will be performed by members of the Office of Enforcement and Investigation, and recommendations will be reviewed and approved by the Director or his designee.

Where the evaluation concludes that a more comprehensive investigation is required for consideration of enforcement action, an investigation will be initiated by the Office of Enforcement and Investigation. Guidance for this investigation is contained in the following section.

3.5. Investigation of Potential Violations

DOE will use informal information gathering steps in investigating noncompliances to understand the facts, circumstances, and safety significance. DOE may request documentation from the contractor, conduct an informal review meeting, interview contractor workers and management, and/or perform an onsite visit to obtain the necessary information. Other DOE Headquarters and Operations Office personnel may assist the Office of Enforcement and Investigation in obtaining and reviewing the information obtained. The conclusion on the potential safety significance of the noncompliance and the need to proceed with further enforcement actions is an independent decision by the Director. Such decisions will be made considering input and recommendations from other DOE Offices, including Program and Operations Office management.

3.5.1. Investigation of Circumstances of the Noncompliance

Once a noncompliance that warrants investigation has been identified, the facts surrounding the matter must be investigated and assembled. The information documented should be specific regarding times, dates, titles of persons, and the procedures, structures, systems and components involved in the violation. The investigation documentation should contain a detailed discussion of the findings to substantiate any health and safety issues and violations of nuclear safety requirements subject to DOE enforcement

actions. In most matters, there may be a need to supplement information initially received from others. In order to develop the appropriate enforcement action, where warranted, information for each violation (or group of violations) should be documented to address the following questions, as applicable and appropriate, considering the significance and complexity of the violation(s) and available resources:

- a. What DOE nuclear safety requirement was violated?
- b. How was the requirement violated?
- c. When was the requirement violated and what was the duration of the violation?
- d. Who violated the requirement?
- e. How and by whom (contractor, DOE or other) was the violation discovered?
- f. Was the violation required to be reported by the contractor to DOE or another government entity and, if so, what was the applicable reporting requirement?
- g. Was the violation reported by the contractor and, if so, when and by whom was it reported?
- h. If the violation was reported by the contractor, but the report was not timely, why was the report not timely?
- i. Was the report complete and accurate?
- j. What was the apparent root cause and contributing causal factors for the violation? Did the contractor aggressively pursue this information?
- k. Were there multiple examples of a particular violation?
- l. Is the evidence indicative of programmatic problems or is it an isolated case?
- m. Was the contractor's management aware or should it have been aware of the violation?
- n. What were the opportunities and when did they exist for the

contractor's staff and management to be aware of the violation?

- o. Is there evidence that any level of the contractor's management was involved directly or indirectly in the violation and to what extent?**

- p. What were the circumstances surrounding the violation, such as system configuration and operational conditions, which would affect its significance?
- q. Are there other circumstances surrounding the violation which increase or decrease its significance?
- r. What short-term corrective and remedial action was taken by the contractor and when was it taken?
- s. Did DOE have to intervene to accomplish satisfactory short-term corrective and remedial action?
- t. Did the contractor aggressively pursue long-term remedies with DOE including proper scheduling and funding of such remedies?
- u. Were there previous, similar DOE or contractor inspection, assessment, or audit findings and, if so, should the corrective actions from those findings have prevented this violation?
- v. Was the noncompliance condition identified in any implementation plan for the affected facility or for any facility at the site (i.e., a close-out or process control failure)?
- w. Did any action (or failure to act) by DOE contribute to this violation?

Further guidance on the conduct of the investigation and required report details are addressed in the Office of Enforcement and Investigation's Operational Procedures for Investigation.

3.5.2. Consideration of Safety Significance

DOE will impose sanctions commensurate with the gravity of the violation. Once the circumstances surrounding a violation are understood and documented, the significance and the commensurate severity level should be determined as part of the investigation. The following paragraphs provide several factors to be considered in a determination of safety significance and severity level.

Immediate Hazard to Workers or the Public:

If facility workers, the public or the environment are likely to be endangered by the continuation of the conditions created by the violation, or if there is a lack of reasonable assurance that activities will be properly conducted, the

responsible SO or other appropriate DOE official should initiate immediate action to correct the condition and promptly discuss with the Director, as appropriate, the need for an immediately effective order such as a Compliance Order issued by the Secretary. In these instances 10 CFR 820, Subpart C, provides that the action may be taken before issuing an investigation report or holding an enforcement conference. Violations of conditions in Compliance Orders may subject the contractor to a separate enforcement action or may increase the severity of enforcement action associated with the underlying noncompliance condition.

Factors Affecting Safety Significance:

In determining the safety significance of a violation, the evaluation should consider the potential hazard to workers inside and outside the facility, to the public and to the environment. In addition, the managerial policies and practices that may represent contributing factors should be considered. Consideration should be given to the matter as a whole in light of the circumstances surrounding the violation. There may be cases in which the hazard is low, but the failures of management are significant in light of the circumstances surrounding the violation and, therefore, the severity level should be based on the management failure(s) and not simply the apparent hazard. The following factors should also be considered:

- a. Did the violation actually or potentially have an impact on health and safety? A violation that involves no actual threat but which had the potential to have an impact on health and safety may be very significant, depending upon the risk of the potential threat, i.e., its likelihood, and the possible consequences involved.
- b. What was the root cause of the violation? Was it caused by training deficiencies? Failure to follow procedures? Inadequate procedures? Failure to properly follow up on activities or commitments? These broader programmatic weaknesses may have more significance than the present violation.
- c. Is the violation an isolated incident or were there multiple examples of similar violations in the same time frame? Is it indicative of a management or programmatic breakdown? Management or programmatic breakdowns may be more severe than an isolated incident.
- d. Was management aware of or involved in the violation, and, if it was involved, at what level of management, and to what extent? Violations in which management was directly involved may be more significant than those of which management was unaware. Violations involving upper-level management should be considered more significant than those

involving first-line supervisors. Inattentiveness on the part of management should also be considered, i.e., should management have been aware of the violation?

- e. What was the duration of the violation? If the condition existed for an extended period without discovery and correction, the risk generally will be proportional to the duration of the violation, and the severity level of the violation should be increased.**
- f. Was DOE notified promptly and provided complete information by the contractor when a violation was found? Delay in providing a comprehensive report to DOE may indicate lack of contractor initiative to improve safety at a facility. Furthermore, failure of a contractor to report a violation to DOE in accordance with established reporting requirements may be considered a violation itself, in addition to the violation that occurred.**
- g. Was the violation inadvertent or did it involve willfulness and, if it did, to what extent? (See Section 1.4. for the definition of willfulness and Section 5.5. for guidance regarding willful violations.)**
- h. Was the violation related to a condition in a Compliance Order? (see 10 CFR 820, Subpart C) These violations may be more significant because contractors have prior notice of the violation and have not taken appropriate actions to correct it after having been directed to do so by the Secretary.**
- i. Did the actual or potential impact involve severe consequences to a single individual or involve lesser, but still substantial consequences, to multiple individuals?**

Aggregation of Violations for Increased Severity Level:

A group of violations may be evaluated in the aggregate (1) if they have the same underlying cause or are attributable to management deficiencies, or (2) they contributed to the same underlying effect, and (3) the resulting Severity Level is a I, II or III.

Any circumstance involving numerous violations should be considered for aggregation at a Severity Level II or III and, when appropriate, Severity Level I. However, both the number and nature of the violations should be considered. Numerous violations that are related, for example, those

involving training, procedures, safety evaluations, or management controls should be considered for aggregation. A group of noncompliances can also be aggregated and designated a violation at the appropriate severity level if the facts and circumstances merit such an action.

Aggregation of violations to a higher severity level should not be confused with the use of multiple examples in Notices of Violation or the use of the multiple occurrences in determining a severity level.

Repetitive Violations

Repetitive violations are a concern because DOE expects a contractor's corrective actions to be effective in eliminating the source of the problem causing the violation. DOE expects contractors to learn from their past failures and not depend on DOE's assessment programs to identify and correct violations of nuclear safety requirements. Therefore, special attention is appropriate for repetitive violations, and escalated action should be considered. At the same time, it is recognized that there are many different circumstances that need to be considered. The following general guidance is provided. It should be noted that for purposes of this enforcement procedure, the term "repetitive" violations is interchangeable with the term "similar" violations.

- a. A "similar" or "repetitive" violation is defined as a violation that reasonably could have been prevented by a contractor's corrective actions for a previous noncompliance condition or violation of nuclear safety requirements, involving similar circumstances and root causes and which occurred within a reasonable period of time.
- b. Previous noncompliance reports, enforcement actions, assessment reports, or "open items" listings from assessment reports, etc., should be used, as appropriate, to evaluate the contractor's prior enforcement history, including noncompliance items, to identify repetitive violations.

A severity level may be increased based on consideration of the frequency of examples of the violation in the same time frame, the number of times the violation has occurred, the similarity of violations and their root causes, the elapsed time between similar violations, and the extent to which previous corrective actions for similar violations were effective in preventing recurrence. The purpose of a decision to increase the severity level of a repetitive or extended violation is to emphasize the importance of DOE contractors' identifying violations and implementing effective corrective actions. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each

case.

3.5.3. Incorporation of Related Violations

During the course of the development of an enforcement action, additional information may be developed by DOE or the contractor involving other violations of DOE nuclear safety requirements related to the action being considered for enforcement.

These related violations are to be incorporated, if practical, into the pending enforcement action. The purpose of incorporating these violations into the pending action is to focus the contractor's attention on the problem area, ensure that all relevant violations are considered whenever enforcement action is being evaluated, and ensure that the safety significance of the violations is evaluated appropriately.

The related violations may be identified at any stage of the enforcement process. If new evidence is identified after the enforcement action has been transmitted to the contractor, the additional related findings are to be brought to the attention of the contractor through a supplemental PNOV. If inclusion in the current enforcement action is deemed to be practical and appropriate, the additional violation, the background or reference material, and any clarifying information should be forwarded to the contractor. If not considered feasible to be included in the current enforcement action, the Director may initiate a separate enforcement action, making appropriate reference to the current one.

3.5.4. Investigation of Preliminary Recommendations on Enforcement Action

The investigation needs to draw conclusions and put forth a recommendation on enforcement action based on the information obtained in the investigation, the consideration of other factors affecting safety significance, and any particular history of performance by the contractor. This decision should include a recommendation on severity level and consideration of monetary civil penalty and mitigation or escalation factors, as appropriate.

Chapter 4 provides guidance on the determination of severity level and corresponding civil penalty and adjustments. Preliminary recommendations should be based on this guidance, and subsequently adjusted if further information becomes available in the enforcement process.

3.5.5. Enforcement Letters

If DOE decides that an enforcement action as described in Chapter 4 is not required, but DOE concludes that it is important to communicate a particular message to the contractor, then DOE may elect to issue an enforcement letter. An enforcement letter is a vehicle to highlight actions taken by the contractor that were appropriate and that formed the basis for not taking more formal enforcement actions. The enforcement letter will also usually identify areas (a) that may have been less than desired but not sufficiently serious to warrant enforcement action, and (b) in which contractor attention is required to avoid a more serious condition that would require enforcement action.

DOE will not require an enforcement letter to close an investigation that does not result in an enforcement action. Many cases will be closed by annotation in the NTS for that noncompliance when it is determined that no enforcement action is necessary.

3.5.6. Enforcement Actions by other Agencies

DOE contractors may be subject to enforcement action by other federal agencies (such as NRC, DOT, DOL-OSHA, or EPA), state, or local government agencies. Sometimes the violation of a DOE nuclear safety rule may also constitute a violation of another federal, state or local requirement. DOE may consider these other actions in formulating its own enforcement action to assure that the overall remedy is appropriate for the infraction, except if restricted from doing so by legal restraints or agreements between DOE and other agencies.

3.6. Informal Enforcement Conferences

Informal enforcement conferences may be called at any time at the discretion of the Director or may be requested by the contractor. The primary purpose of an informal enforcement conference is to discuss the preliminary conclusions of an investigation, inquiry, inspection, or other documented sources of information which may provide a basis for concluding that a violation of DOE nuclear safety requirements may have occurred. The initial enforcement conference should take place prior to issuance of a PNOV. The conference will include discussion of the safety significance and cause(s) of the violation, any mitigating or aggravating circumstances along with any other relevant information. As appropriate, more than one enforcement conference can be scheduled.

3.6.1. Enforcement Actions that Generally Will Require Enforcement Conferences

An enforcement conference will normally be held in each of the following cases:

- a. Potential civil penalty actions at any severity level.
- b. Selected Severity Level III violations which, if repeated, could lead to an enforcement action at a higher severity level.
- c. Significant numbers of recurring noncompliances.
- d. A group of Severity Level III violations for which a civil penalty may be considered.

In addition, the Director has the discretion to require a conference in any other circumstance in which it is appropriate for the clarification of matters in controversy and/or may lead to an improvement in nuclear safety for workers and the public. Additionally, DOE may conclude that when sufficient information is known and opportunity for contractor input has occurred, an enforcement conference is not required. A contractor may request a conference at any time if none has been set by the Director, and such requests should be liberally granted.

3.6.2. Scheduling and Notification of Enforcement Conferences

In general, if an initial enforcement conference is planned, it should be held before a PNOV is issued. A primary purpose of a conference is to assure that the record is complete and accurate before an enforcement decision is made. The conference should usually be scheduled within four weeks after completion of the Office of Enforcement's investigation that supports the basis for a possible enforcement action. The contractor should normally be informed of the staff's intent to conduct an enforcement conference at least two weeks in advance of the scheduled conference.

Refer to Section 5.2. for special procedures for cases that have been referred to DOJ because these cases require coordination with DOJ and approval of the Director prior to scheduling an enforcement conference.

If immediate enforcement action is necessary, the action may be taken before an enforcement conference (See Section 3.5.2. and 10 CFR 820, Subpart C). Subsequent to taking immediate enforcement action, an enforcement conference may be held.

In general, such conferences should be informal without a formal transcript of the proceedings in order to encourage candor.

3.6.3. Attendance at Enforcement Conferences

a. DOE Personnel

- 1. The Assistant Secretary, the Office of the Assistant Secretary for Environment, Safety and Health, may attend all conferences at his or her discretion.**
- 2. Designated Office of Enforcement and Investigation staff shall attend all enforcement conferences in person. The Director will normally chair the enforcement conference or designate a staff individual to chair the conference.**
- 3. A representative of the Cognizant Secretarial Officer (CSO) and DOE Field Management representatives should attend enforcement conferences to provide input regarding the safety significance of the violation, root causes, special circumstances and comprehensiveness of corrective actions.**
- 4. In order to promote fulfillment of its responsibilities under 10 CFR 820, Subpart D, representatives of General Counsel may be invited by the Director to attend those conferences involving complex or novel legal issues or those involving a complex or significant investigation.**
- 5. Investigatory organizations may be invited by the Director to attend those enforcement conferences that involve a complex or significant investigation, or those that could potentially result in referral for special investigation.**
- 6. Other EH personnel may attend the conference at the request and under the direction of the Director.**

b. DOE Contractor Personnel

- 1. In order to assure a positive outcome from such activity, the Director shall ensure that contractor management participates in the enforcement conference at the appropriate level. This may require participation by senior management of the parent organization of the DOE contractor if determined to be appropriate by the Director.**
- 2. The Director should give consideration to requiring attendance of the person(s) involved directly in the noncompliance at the enforcement conference. It may be beneficial for DOE management to hear firsthand the individual's explanation for the actions taken to understand more completely the circumstances of the violation.**

3. Contractors may invite their attorneys or consultants to attend conferences. However, if classified information is disclosed or discussed, appropriate clearances must be exhibited to DOE personnel.

c. Media and Members of the Public

As stated in the Enforcement Policy, enforcement conferences are predecisional meetings intended to provide a forum of open and candid discussion regarding a potential enforcement issue. Therefore, they are normally closed meetings between DOE and the contractor (including the parent organization's management). This excludes the media and public from enforcement conferences although, in some instances, a press conference may be held afterwards or a press release issued if the Director the Assistant Secretary for Environment, Safety and Health, or the Secretary concludes it is appropriate.

3.6.4. Notification to Contractor of Informal Enforcement Conference

DOE will generally prepare a Notification of Scheduled Enforcement Conference to inform the contractor and DOE personnel of the plans and schedule for the enforcement conference. The Notification should describe the agenda to be discussed to help focus the conference on the issues and make it as meaningful as possible. It is important to ensure that the contractor understands what is expected at the conference. In general, telephone discussions with the contractor may supplement the notification letter to convey and/or clarify the issues to be discussed.

The Notification should include the following:

- (a) Schedule and location for the enforcement conference;
- (b) DOE attendees planned for the conference, and personnel who should attend from the contractor organization;
- (c) Summary of DOE's preliminary conclusions and basis on the potential violation based on information received to date;
- (d) Any particular points or information the contractor should address in the enforcement conference;
- (e) If time permits, an outline or agenda of the specific issues to be discussed.

3.6.5. Conduct of Enforcement Conferences

a. Management Participation

Once a decision is made to hold an enforcement conference, the Director determines the level of management representation required of the contractor, as well as the level of DOE management participation in cooperation with other DOE offices.

b. Conference Procedures

Enforcement conferences will be chaired by members of the Office of Enforcement and Investigation. The Office of Enforcement and Investigation shall be responsible for directing the enforcement conference and as such, all positions on the proposed enforcement action shall be presented by the DOE Chair or, at the discretion of the Chair, by other appropriate DOE staff. This process will assure preparation of an appropriate agenda and assure that DOE enforcement positions are not compromised.

c. Areas of Discussion

- 1. DOE's understanding of the facts and circumstances surrounding the violation or problem should be discussed at the enforcement conference. These discussions should include the safety significance of the violation and the contractor's understanding of the violation (i.e., whether or not the contractor agrees that the violation occurred, and if not, what additional facts it believes are relevant). In addition, the contractor should explain the causes of the violation, its views of the safety significance of the violation, the corrective actions taken to correct the immediate problems and to prevent future occurrences. If appropriate, any aggravating or mitigating factors should be discussed. The contractor should provide documented support of its positions if this information has not been submitted earlier.**
- 2. The primary purpose of the conference is to obtain information relevant to the subject noncompliances and to have an open, frank discussion of all elements of the matter. Its primary purpose is not to negotiate sanctions. Although the contractor may provide information that may be relevant to determining severity levels and civil penalty amounts, in general the discussion will not focus on issues such as specific severity levels, civil penalty amounts, mitigation percentages, or the nature and content of any orders. (See**

Section 4.5.4. for additional guidance concerning the release of predecisional enforcement information to contractors.) If the contractor offers its views on such issues, the Office of Enforcement and Investigation will make clear that final DOE decisions on such matters will be made subsequent to the conference and will be provided to the contractor at a later date.

d. Depth of Detail

The following guidelines are appropriate to consider with respect to the depth of detail and degree of debate permitted at enforcement conferences.

- 1. The depth of detail of the discussion should be related to the complexity and significance of the issues. Most of the detailed information discussed should have been included in the documented basis for the violation.**
- 2. The information discussed should be sufficient to highlight the alleged violation, any related violations, how the violation was discovered, how DOE was notified of the violation, and the cause of the violation. Corrective action information should address adequacy and promptness.**
- 3. An enforcement conference is not to be used as a forum for protracted debate. Once the pertinent facts have been established, the DOE Chair should recognize that a difference of opinion may exist and keep the enforcement conference moving forward.**
- 4. If a contractor disagrees with DOE's findings or its position, the contractor should bring this matter to DOE's attention at the enforcement conference.**

3.6.6. Identification of Additional Violations

When additional information, disclosed during or after the conference, could lead to the identification of more violations, such information should be substantiated with probative evidence before it is included in a proposed enforcement action. In addition, the contractor (1) should have an opportunity to discuss the apparent violation(s) in a subsequent informal enforcement conference before it is formalized and (2) should provide any additional relevant information. Likewise, the Director may schedule a follow-up enforcement conference.

3.6.7. Enforcement Conference Summary Report

After the enforcement conference, a brief report will be prepared by the Office of Enforcement and Investigation to document the conference discussions. It is not necessary to summarize all discussion, but all relevant points of discussion should be included. The summary report should

include the following information, as applicable:

1. **The date and place of the enforcement conference.**
2. **A list of the enforcement conference attendees from DOE and the contractor.**
3. **A brief description of the contractor's position, i.e., if the contractor agrees with the findings or if the contractor takes issue with the potential violation(s).**
4. **A list of any documents presented at the conference.**
5. **A summary of the factual information which provides the basis for the violation.**
6. **A brief description of significant additions or corrections to the factual information which is the basis for the violation.**
7. **A brief description of any significant additional information which affects the management causes or safety significance of each violation.**
8. **A description of any other points of significant disagreement.**
9. **A brief description of the contractor's short-term and long-term corrective and remedial actions that it has implemented or has committed to implement.**
10. **An analysis of all of the above information establishing DOE's conclusion on the violation at that point in time.**

The summary is especially important for those cases in which new information is provided, errors are identified in the documented basis for the violation, or significant clarifications of information are provided. In some limited circumstances, it is possible that providing a copy of documents produced at the conference may be sufficient to summarize the enforcement conference discussions.

This summary report should be prepared so that it may be issued to all DOE enforcement conference attendees at the time an enforcement determination has been rendered. The report should be clearly marked as 'Predecisional Information, Not for Public Release.'

Finally, enforcement conference summary reports should be screened to make sure that classified information is not included. A copy of the summary report should be provided to the Office of the Assistant Secretary for Environment, Safety and Health. A letter should be sent to the contractor, including such information about the enforcement conference as may be appropriate under the circumstances of the matter in controversy.