Department of Energy
Washington, DC 20585

June 21, 2007

Ms. Rachel Claus
President
Department of Energy and
Contractor Attorneys' Association, Inc.
Stanford Linear Accelerator Center
2575 Sand Hill Road
Mailstop 2
Menlo, California 94025

Dear Ms. Claus:

Thank you for your May 1, 2007, letter sharing the concerns of the Department of Energy (DOE) Contractor Attorneys' Association with the implementation of title 10, Code of Federal Regulations, part 851 (10 CFR 851), "Worker Safety and Health Program," regulations. As you recognize, DOE has expended considerable effort to respond to questions raised by the contractor community with regard to implementation of these regulations. Given the extensive efforts DOE has made in this regard, we were frankly rather surprised by the critical tone of your letter.

We do not agree that the issues you raise should have been addressed by rulemaking. It is quite common for Government Agencies to issue guidance to clarify provisions of regulations; and in this case, it is hard to imagine that a rulemaking could have provided the contractor community with timely assistance. Where contractors have had general questions, guidance was issued as quickly as practicable, and posted on the Office of Health, Safety and Security (HSS) Web site to assure rapid and effective dissemination. In some cases, the DOE Office of the General Counsel issued binding interpretations (also posted on the Web site), as provided for in the regulations.

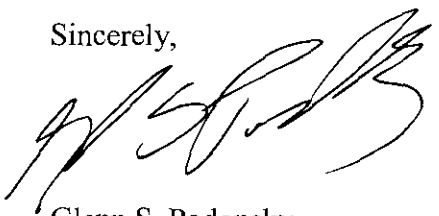
Some of the concerns you raise relate to purported DOE interpretations of the 10 CFR 851 regulations that were not provided on the HSS Web site, and which contradict or at least are inconsistent with, the posted guidance. One example is the assertion that DOE's interpretation of "controlled," for purposes of the coverage of 10 CFR 851, extends to DOE control over the work performed. This is not and has not been DOE's interpretation, and the posted guidance has been clear that the concept of "control" involves DOE control over the physical location of the work, not the nature of the work.

It is not surprising that in an organization as large and diverse as DOE, individuals can be found who have varying views on how 10 CFR 851 should be interpreted and implemented. Nevertheless, the Headquarters guidance posted on the HSS Web site is the appropriate interpretation of the 10 CFR 851 regulations so far as DOE is concerned. When enforcing the 10 CFR 851 requirements we intend to be cognizant of situations where contractors relied upon guidance provided on the HSS Web site. Reliance on other interpretations offered by DOE employees will not be deemed relevant.

DOE has been addressing the occupational medicine provisions, which we acknowledge can impose substantial burdens on certain contractors. We believe that we have found methods to alleviate these burdens, and we are still addressing this area.

We intend to continue to monitor implementation of 10 CFR 851 and will address issues where assistance is needed. We hope that you will continue to bring such matters to our attention. Should DOE decide to issue an amendment to improve implementation of 10 CFR 851, we hope you will participate in the public comment period on those regulations.

Sincerely,



Glenn S. Podonsky
Chief Health, Safety and Security Officer
Office of Health, Safety and Security

HSS
Office of Health, Safety and Security

CONCURRENCE SHEET

Subject: DOECAA Response Letter	**Admin Review**	**Concurrence**
	HS-10	**Office:HS-10**
	Name: Susan Whitmore for mal	**Name**: Patricia Worthington
	Date: 6/7/07	**Date:**
Originating Office: HS-10	**Signature:** mal	**Signature:**
	HS-40	**Office: HS-40**
HSCT Number: HS10-07-N1-0023	**Name**: Jillian Carter	**Name**: Arnold Guevara
	Date:	**Date:** 6/15/07
Distribution	**Signature:**	**Signature:**
bcc: HS-1 Chron	**HS-**	**Office: HS-1**
bcc: HS-10 Chron	**Name**:	**Name**: Mike Kilpatrick
bcc: Bill McArthur, HS-11	**Date:**	**Date:** 6/21/07
bcc: David Hill, GC	**Signature:**	**Signature:**
bcc: Dave Jones, GC	**HS-**	**Office: HS-1**
	Name:	**Name**: Glenn Podonsky
Reference RIDS #:	**Date:**	**Date:**
	Signature:	**Signature:**

Special Notes:	**Concurrence**	
	Office:	**Office**:
	Name:	**Name**:
	Date:	**Date:**
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