

DOE/HS-40

Office of Enforcement  
Office of Health, Safety and Security

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# *U.S. Department of Energy*



## *Office of Enforcement 2008 Annual Report*



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## EXECUTIVE SUMMARY

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The Department of Energy (DOE or Department) Office of Enforcement, within the Office of Health, Safety and Security (HSS), is responsible for implementing the DOE Enforcement Program. This 2008 Annual Report describes the activities, accomplishments, and focus areas of the DOE Office of Enforcement from January 1 through December 31, 2008.

In 2008, the Office of Enforcement performed its mission responsibilities by issuing six enforcement actions (one of which was investigated in 2007). The assessed civil or contract penalties for the violations totaled \$1,391,250 of which \$288,750 was waived for a DOE contractor statutorily exempt from civil penalties. DOE also granted \$563,750 of mitigation in determining the assessed civil penalties. Notably, in 2008, the Office of Enforcement issued the first enforcement action for worker safety noncompliances under 10 C.F.R. Part 851.<sup>1</sup> The Office of Enforcement also issued and monitored the response to several enforcement letters, a special report order, and a Secretarial Compliance Order.

HSS senior management, including the Chief Health, Safety and Security Officer, has fully supported the Office of Enforcement's efforts to enhance the program and lay a strong foundation for a successful and rigorous enforcement program. A major focus of the Office of Enforcement in 2008 was implementing a number of actions to improve the program infrastructure, enhance communications with stakeholders, and/or support DOE line management. Some of the Office of Enforcement's significant accomplishments include: further integrating the enforcement program with HSS policy, independent oversight, training, security assistance, and corporate analysis functions; performing three integrated program reviews, which concurrently address all three functional elements of the enforcement program (worker safety and health, nuclear safety, and security); continuing and expanding the extensive efforts to communicate with DOE contractors and field elements through various mechanisms; and enhancing the Office's internal processes, infrastructure, resources, and products by such means as developing/updating and enhancing internal procedures, hiring additional subject matter experts, and identifying ways to streamline enforcement investigations and improve the timeliness of reports and enforcement actions.

In 2009, the Office of Enforcement intends to continue to implement its responsibilities for investigating noncompliances and, where necessary, issue enforcement actions. The Office of Enforcement management team intends to continue to emphasize openness and communication and will continue to solicit feedback from DOE contractors and other stakeholders. Specific priorities for calendar year 2009 include: using the new security-significance database and enhanced tools in the Safeguards and Security Information Management System (SSIMS) to systematically analyze security incident data to identify trends and potential security-significant noncompliances; performing additional program reviews and integrated program reviews at various sites; continuing to promote consistency and timeliness by enhancing process documents to reflect newer protocols; working to clarify regulatory intent in such areas as applicability to vendors; and continuing extensive education and outreach efforts, including supporting Energy Facility Contractors Group (EFCOG) efforts, partnering with the voluntary protection program (VPP), and providing training on enforcement. In addition, with the support and direction of HSS senior management, the Office of Enforcement will

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<sup>1</sup> On February 9, 2006, DOE issued the *Worker Safety and Health Program* rule, 10 C.F.R. Part 851, which includes, in Subpart E, the enforcement process to be applied to worker safety and health violations, and, in Appendix B, the enforcement policy for such violations. Part 851 went into effect on February 9, 2007, and as of May 25, 2007, no work could be performed at a covered workplace unless an approved worker safety and health program was in place.

further strengthen the enforcement program to reduce the recurrence of issues and promote improvements in DOE safety and security by further integrating the enforcement function with HSS's independent oversight function. This integration will promote the overarching DOE and HSS goal of improving DOE site security and environment, safety, and health programs.

## 1. INTRODUCTION

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The Department of Energy (DOE or Department) Office of Enforcement (HS-40 or Office), within the Office of Health, Safety and Security (HSS), is responsible for implementing the DOE enforcement program. The Office of Enforcement's mission is to promote overall improvement in the Department's nuclear safety, worker safety and health, and classified information security programs through the management and implementation of the statutorily required enforcement functions. It is the Office of Enforcement's operating philosophy that the use of incentive based enforcement actions will improve contractor performance and compliance and fulfill mission objectives. Consistent with the HSS mission and philosophy, HS-40 shares its insights gained through enforcement with other organizational elements within HSS, the Department, and the contractor community. Communication within HSS generates a synergistic effect among HSS policy, field assistance, oversight, and training functions to ensure that HSS is well-integrated and supports effective contractor implementation of safety and security programs. Communication with the contractor community is intended to share lessons learned in order to improve protection of workers, the public, and to enhance national security.

The Office of Enforcement strives for integration among the three subordinate organizations listed below, which represent three distinct functional elements of the overall enforcement program:

- The Office of Worker Safety and Health Enforcement (HS-41), which implements the Department's congressionally mandated worker safety and health enforcement function in accordance with Title 10, Code of Federal Regulations, Part 851, *Worker Safety and Health Program* (10 C.F.R. Part 851).
- The Office of Price-Anderson Enforcement (HS-42), which implements the Department's congressionally mandated nuclear safety enforcement function in accordance with Title 10, Code of Federal Regulations, Part 820, *Procedural Rules for DOE Nuclear Activities* (10 C.F.R. Part 820).
- The Office of Security Enforcement (HS-43), which implements the Department's congressionally mandated security enforcement function in accordance with Title 10, Code of Federal Regulations, Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations* (10 C.F.R. Part 824).

Although these three enforcement functional elements are based on different regulations, the program objectives and underpinnings of the regulations are identical. Accordingly, the Office seeks to integrate these safety and security programs and is streamlining the enforcement process to enhance timeliness.

This 2008 Annual Report describes the activities, accomplishments, and focus areas of the DOE Office of Enforcement from January 1 through December 31, 2008. The Office of Enforcement believes this report is important to the DOE community, other government agencies, and the public in providing information about the Department's enforcement program and ensuring that the Office of Enforcement has an open process. To facilitate this open process, the Office of Enforcement's *Enforcement Process Overview* describes the enforcement functions for worker safety and health, nuclear safety and classified information security enforcement. It can be found on the HSS website at [http://hss.energy.gov/Enforce/EPO\\_1207.pdf](http://hss.energy.gov/Enforce/EPO_1207.pdf).

If you have questions or comments about this Annual Report or would like to provide feedback on the enforcement program, please contact:

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## 2. ANNUAL REPORT HIGHLIGHTS

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In calendar year 2008, the Office of Enforcement focused on: (1) continuing its long-established enforcement activities in the area of nuclear safety and (2) continuing to implement and refine the relatively new enforcement functions in the areas of worker safety and health and classified information security. While implementing the new enforcement functions, the Office of Enforcement adapted the successful practices of its nuclear safety enforcement function to meet the needs of worker safety and health and classified information security enforcement regulations.

Throughout the year, the Office of Enforcement has received the full support and encouragement of HSS senior management, including the Chief Health, Safety and Security Officer. This support has enabled the Office of Enforcement to: (1) perform its mission, (2) implement the new enforcement functions, (3) lay the foundation for a strong, rigorous and successful program that responds to evolving DOE needs, and (4) perform multiple concurrent enforcement investigations and related actions.

In 2008, the Office of Enforcement reviewed almost 300 nuclear and worker safety and health noncompliances reported into the Noncompliance Tracking System (NTS). The Office of Enforcement also reviewed more than 600 security incident notifications reported into the Safeguards and Security Information Management System (SSIMS), 434 of which involved noncompliances with DOE directives regarding the protection of classified information. The Office of Enforcement also reviewed numerous issues and concerns from other sources, such as the Occurrence Reporting and Processing System (ORPS), employee concerns, accident investigations, DOE-HSS Office of Independent Oversight reports, security survey reports, and issues identified by DOE line management, the Office of Inspector General, and the Government Accountability Office.<sup>2</sup>

In 2008, the Office of Enforcement fulfilled its mission responsibilities to issue enforcement actions, enforcement letters, special report orders, and program reviews and to monitor compliance with requirements associated with corrective actions. The enforcement activities accomplished in 2008 are summarized below and described in more detail in Section 3 of this report. The full text of all enforcement actions, enforcement letters and other enforcement tools (such as program reviews and integrated program reviews) are available on the Office of Enforcement web site at <http://www.hss.energy.gov/enforce/>.

- Six notices of violation were issued in 2008 (one of which was investigated in 2007) that included 6 severity level I, 25 severity level II, and 4 severity level III violations.<sup>3</sup> Five of these cases were subject to civil penalties totaling \$1,141,250 and one was subject to a contract penalty of \$250,000, for total penalties of \$1,391,250. One contractor was exempt from civil penalties by statute, resulting in \$288,750 of the assessed civil penalties being waived. (As discussed below, the exemption from civil penalties for certain institutions no longer applies for a contract entered into with DOE on or after August 8, 2005). DOE also granted \$563,750 of mitigation in determining the assessed civil penalties.<sup>4</sup>

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<sup>2</sup> Each year, DOE sites self-report a substantial number of issues to NTS or SSIMS that may indicate a non-compliant condition with respect to safety or security requirements. The Office of Enforcement reviews the reported issues and identifies those that reach a higher threshold of significance for further evaluation.

<sup>3</sup> Violations are categorized as severity level I, II, or III. Severity level I is the most severe.

<sup>4</sup> DOE provides substantial incentive for early self-identification and reporting of violations (up to 50 percent mitigation of the base civil monetary penalty). Substantial mitigation (up to an additional 50 percent mitigation) is also possible if corrective action is prompt and

- The Office of Enforcement issued the first enforcement action for worker safety and health noncompliances under 10 C.F.R. Part 851 to Battelle Energy Alliance, which operates the Idaho National Laboratory. Additionally, an enforcement letter was issued to Los Alamos National Security, LLC regarding multiple programmatic worker safety and health issues at the Los Alamos National Laboratory.
- The Office of Enforcement devoted significant attention to monitoring a Secretarial Compliance Order issued in July 2007 under 10 C.F.R. Part 824 to Los Alamos National Security, LLC, requiring remediation of classified information and cyber security program deficiencies at the Los Alamos National Laboratory; actions required by the compliance order were completed on schedule in December 2008.
- The Office of Enforcement monitored compliance with a special report order issued in January 2008 to Los Alamos National Security, LLC, requiring Los Alamos National Laboratory to report on corrective action plans for two events that resulted in radiation exposures to workers, including actions to address the organizational and cultural deficiencies that contributed to the events.
- Three enforcement letters were issued addressing concerns about the protection of classified information. These concerns stemmed from an Office of Enforcement analysis of security incidents across the DOE complex in 2007, as reported in SSIMS. These letters were issued with the overarching goal of promoting improvements and correcting deficient conditions before a significant security event or violation occurs.

Office of Enforcement accomplishments in 2008 also included a number of actions to improve enforcement program infrastructure, enhance communications with stakeholders, and/or support DOE line management:

- Further integrating the enforcement programs with HSS policy, oversight, training, and corporate analysis functions. In keeping with the promise of HSS to improve the integration of safety and security programs in DOE, the Office of Enforcement has placed significant emphasis on sharing insights gained through enforcement activities with other organizational elements within HSS, DOE line management, and the contractor community. This integrated approach led to the identification of some gaps in the analysis and trending of safety and security events/incidents that will continue to be a focus area in 2009.
- Performing three integrated program reviews (IPRs). These are the first Office of Enforcement program reviews that concurrently address all three enforcement functional elements (worker safety and health, nuclear safety, and classified information security) and thus reduce the burden on contractors associated with separate program reviews.
- Communicating with DOE line management and DOE contractors through various mechanisms, including participation in meetings of the Energy Facility Contractors Group (EFCOG), specifically, meetings of the Safety and Security Regulatory Working Group, Security Working

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aggressive. Accordingly, DOE considers a number of factors in assessing each potential enforcement situation. In determining whether an enforcement action will be mitigated, DOE considers, among other factors, the opportunity available to discover the violation, the ease of discovery, the promptness and completeness of the notification report to DOE, and the scope and promptness of the corrective actions.



Group, Environment, Safety and Health (ES&H) Working Group, and Contractor Assurance Working Group.

- Enhancing the Office of Enforcement's internal processes, infrastructure, resources, and products by: updating the *Enforcement Process Overview* to include the new enforcement areas, developing HSS and Office of Enforcement internal standard operating practices (SOPs), working with the HSS Office of Security Technology and Assistance to enhance SSIMS programming for security enforcement self-reporting, hiring subject matter experts to fill vacancies and enhance overall technical capabilities, continuing to identify ways to streamline enforcement investigation reports to better focus on the actions and events that constitute apparent noncompliances, and providing mechanisms for workers at DOE sites to formally report a safety or security noncompliance and request that an investigation be performed.

In 2009, the Office of Enforcement will continue to implement its responsibilities for investigating noncompliances and, where necessary, take enforcement actions. The Office of Enforcement management team intends to continue to emphasize openness and communication and will continue to solicit feedback from DOE site contractors and other stakeholders. Specific priorities for calendar year 2009 include:

- Implementing the security-significance database, which will be used as a tool to systematically analyze site-specific and complex-wide security incident (event) data to identify trends and potential security-significant noncompliances.
- Implementing the enhanced enforcement tool in SSIMS for reviewing security incidents for 10 C.F.R. Part 824 applicability as well as reviewing self-identified noncompliances resulting from assessments conducted by contractor organizations.
- Supporting DOE efforts to adjust the amounts of civil penalties (e.g., to consider inflation).
- Performing program reviews and IPRs.
- Continuing to refine the approach used to evaluate NTS, ORPS, and SSIMS reports and other data sources for events and issues that may warrant enforcement action.
- Promoting improvements in nuclear safety by increasing the emphasis during investigations on contractor compliance with requirements for management assessments, quality assurance, and other applicable feedback mechanisms as they apply to events and accidents.
- Mentoring newly hired staff to continue strengthening the Office's technical capabilities.
- Promoting consistency and timeliness through continuously enhancing process documents to reflect newer protocols (e.g., not convening enforcement conferences when there are no significant disagreements or issues to resolve) and better integrate the three enforcement functional elements.
- Working with the HSS Office of Health and Safety to revise regulations (i.e., 10 C.F.R. Part 850) and clarify regulatory intent as needed, in such areas as applicability to vendors.
- Working with General Counsel to draft rulemaking to increase civil penalties consistent with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990.

- Continuing extensive education and outreach efforts, including supporting EFCOG efforts, partnering with the voluntary protection program (VPP), and providing familiarization training on safety and security enforcement.
- Further strengthening the enforcement program to reduce the recurrence of issues and promote improvements in DOE safety and security, through consideration of the results of recent external reviews and support for the broader HSS effort to strengthen both enforcement and oversight functions by integrating the enforcement function with HSS's independent oversight function. This integration will promote the overarching DOE and HSS goal of improving DOE site security and environment, safety, and health (ES&H) programs. Specific Office of Enforcement activities may include additional emphasis on escalated penalties for recurring events, increased focus on contractor assessments and quality assurance, increased use of enforcement letters, and improved coordination with the HSS Office of Independent Oversight in identifying focus areas for increased enforcement attention.

### 3. ENFORCEMENT CASES

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Procedural requirements, processes, and policies for the enforcement program are contained in:

- Title 10 C.F.R. Part 820 and its appendix A for nuclear safety enforcement
- Title 10 C.F.R. Part 851 subpart E and its appendix B for worker safety and health enforcement
- Title 10 C.F.R. Part 824 and its appendix A for classified information security enforcement.

DOE enforces the following rules and requirements: 10 C.F.R. Part 830 (subpart A, *Quality Assurance* and subpart B, *Safety Basis Requirements*); 10 C.F.R. Part 835, *Occupational Radiation Protection*; 10 C.F.R. Part 850, *Chronic Beryllium Disease Prevention Program*; 10 C.F.R. Part 851, *Worker Safety and Health Program* (subpart B, *Program Requirements*, and subpart C, *Specific Program Requirements*); 10 C.F.R. Part 1016, *Safeguarding of Restricted Data*; and 10 C.F.R. Part 1045, *Nuclear Classification and Declassification*. All applicable DOE security and cyber security orders and manual requirements established by contract or in DOE-approved program plans that implement these rules are enforceable within the purview of the enforcement program. Other requirements, such as the *Information Requirements* provision of 10 C.F.R. § 820.11, may also be enforced. Also, under 10 C.F.R. Part 708, *Contractor Employee Protection*, DOE may take enforcement action against contractors that have retaliated against employees for raising safety concerns.

This section discusses noncompliance reporting systems and the enforcement activities conducted in 2008. As discussed below, Office of Enforcement activities in 2008 included issuing notices of violation, monitoring compliance orders, issuing a special report order (which was developed in 2007 and issued in January 2008), issuing enforcement letters, and conducting program reviews.

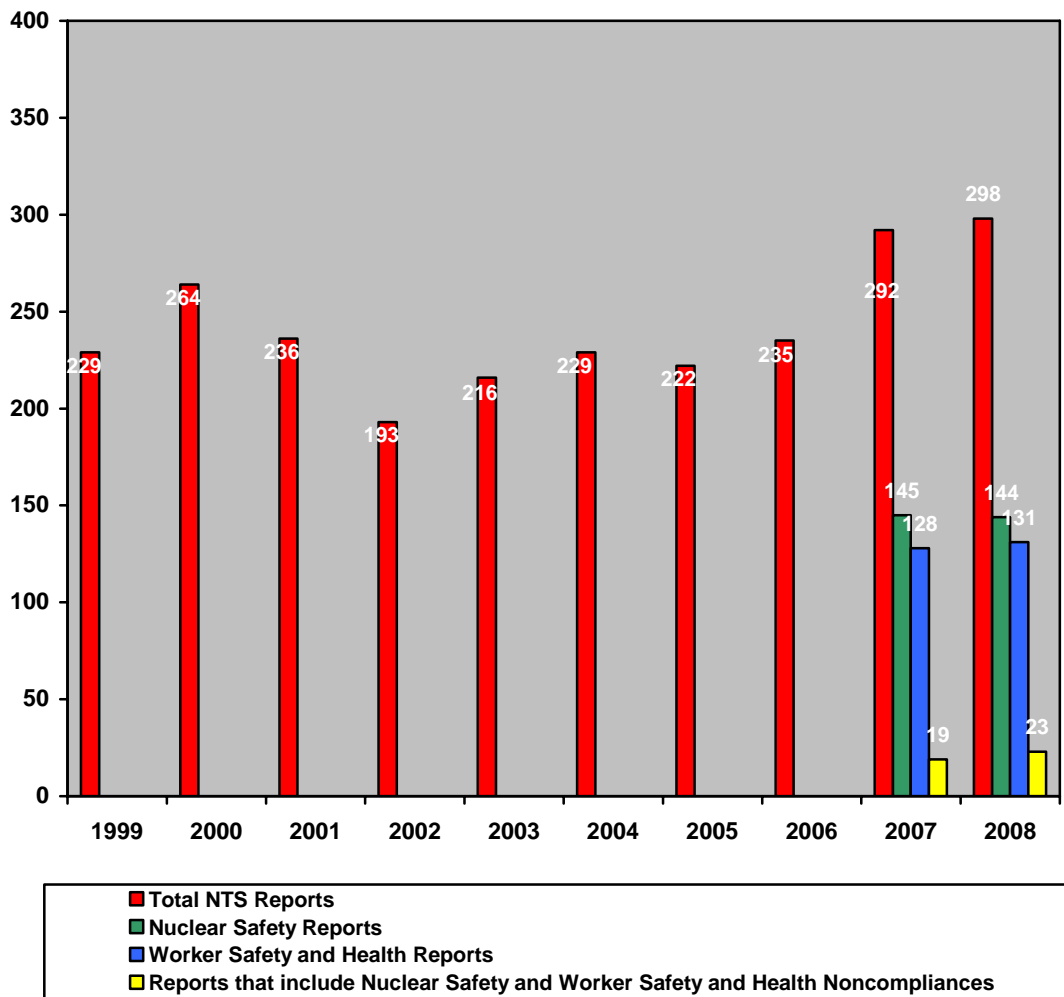
#### **Noncompliance Reporting**

The Office of Enforcement established the NTS for voluntary reporting of nuclear and worker safety and health noncompliances. Security noncompliances resulting from security incidents (events) that fall within the Impact Measurement Index (IMI) categories (as defined in the IMI tables) are reported into SSIMS. Unlike nuclear and worker safety and health, however; contractors did not have an efficient mechanism to directly report security self-assessment noncompliances into SSIMS. This shortcoming was addressed in 2008 through the development of SSIMS enhancements. These enhancements enable contractors to voluntarily self-report classified information security noncompliances resulting from contractor self-assessments. Implementation of this enhanced tool is a 2009 focus area (discussed further in Section 4 under the subheading “Security”).

DOE enforcement policies provide discretion in pursuing most noncompliances; therefore, the Office of Enforcement may choose not to initiate an enforcement action if contractors appropriately self-identify the condition, report it into NTS or SSIMS, and promptly correct it. For more significant cases, the policies also allow for mitigation of civil penalties when contractors promptly self-identify and report noncompliances and implement prompt and comprehensive corrective actions. Although progress continues to be made, noncompliance reporting for worker safety and health at DOE sites needs further refinement and continued maturation. Consequently, worker safety and health noncompliance reporting will continue to be a focus area in 2009, and the Office of Worker Safety and Health Enforcement will provide increased feedback to DOE line management in this area (further discussed in Section 4 under the subheading “Worker Safety and Health”).

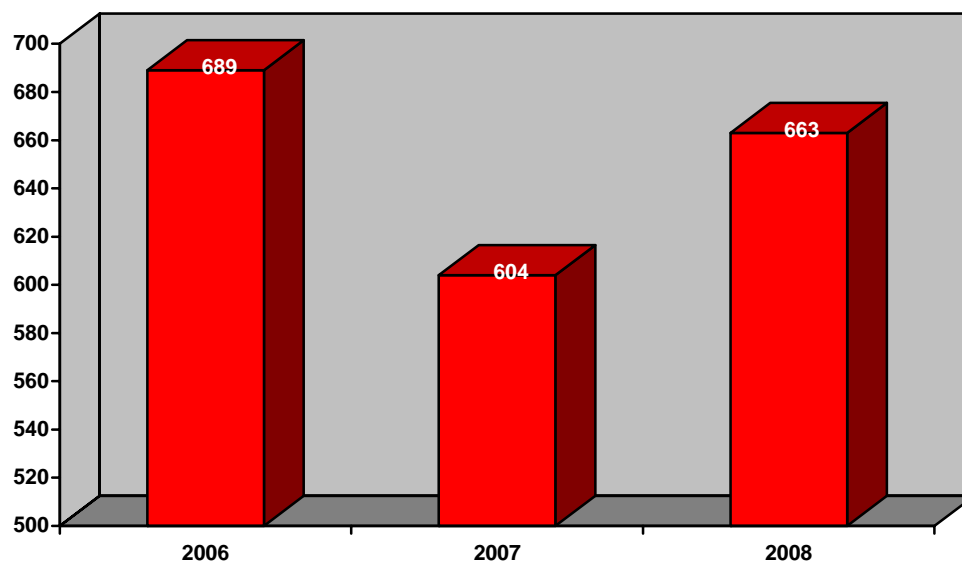
The Office of Enforcement reviewed all 298 nuclear and worker safety and health reports that were submitted into NTS in 2008, as shown in Figure 3-1. Because 10 C.F.R. Part 851 became enforceable in May 2007, the data in Figure 3-1 for 2007 and 2008 includes a breakdown of the reports by nuclear safety, worker safety and health, or both (i.e., some reports identified both nuclear safety and worker safety and health issues). Figure 3-1 shows that the total number of NTS reports in 2008 is comparable to the number in 2007 and is higher than previous years. This is largely because the 2007 and 2008 data includes worker safety and health reports submitted since 10 C.F.R. Part 851 became effective. The number of nuclear safety-related NTS reports in 2008 is about the same as 2007, and is approximately 30 percent less than the average for the previous 5 years.

During 2008, enforcement staff evaluated this decline in nuclear safety reporting through the review of complex-wide event reports, discussions with various DOE and contractor coordinators, and as part of the conducted IPRs. Enforcement staff found that declines were not consistent across the DOE complex and, where present, were attributable to various reasons, such as a corresponding decline in events or a shift in reporting emphasis to 10 C.F.R. Part 851 reporting issues. The Office of Enforcement will continue to monitor NTS reporting trends and follow-up as necessary.



**Figure 3-1. Number of NTS Reports**

A total of 663 incidents of security concern were reported into SSIMS in 2008. Of the 663 incidents, 434 involved noncompliances with DOE directives regarding the protection of Restricted Data and other classified information. These noncompliances typically result from an event that potentially compromises classified matter. For example, such events could entail providing classified information to unauthorized personnel (e.g., including classified information in an unclassified email). Figure 3-2 represents the total number of security incidents reported for calendar years 2006, 2007, and 2008 and shows a marked decline in the number of security incidents reported for 2007 as compared to 2006 and 2008. The Office of Enforcement believes that the number of classified matter incidents could be reduced through a continued emphasis on security incident trending and by fixing weaknesses identified during contractor self-assessments and external inspections/audits. One approach that would give self-assessment results greater importance and visibility is to track these results and the associated corrective actions in SSIMS. The ability to report self-identified noncompliances into SSIMS has recently been made available through enhancements designed in partnership with the HSS Office of Security Technology and Assistance. This reporting complements the process for reporting security events established in Section N of DOE Manual 470.4-1, *Safeguards and Security Program Planning and Management*. It also benefits contractors by allowing them to take credit, from an enforcement program perspective, for self-reporting areas of potential noncompliance.



**Figure 3-2. Number of Security Incidents Reported**

### Notices of Violation

When violations of enforceable rules and requirements are identified, DOE has the authority to issue notices of violation and assess civil penalties. Six enforcement actions were issued in 2008 (one of which was investigated in 2007) that included 6 severity level I, 25 severity level II, and 4 severity level III violations. Five of these cases were subject to civil penalties totaling \$1,141,250 and one was subject to a contract penalty<sup>5</sup> of \$250,000, for a total of \$1,391,250. One of the enforcement actions involved a contractor exempt from civil penalties by statute resulting in \$288,750 of the assessed civil penalties being waived. These exemptions will end for certain contractors when their contract to operate the facility is renewed/rebid. The assessed civil penalties also included \$563,750 in total mitigation awarded by DOE based on proactive contractor identification of noncompliances and effective causal analysis and resulting corrective actions. Table 3-1 summarizes the six enforcement actions, and Figures 3-3 and 3-4 show the number of enforcement actions and civil penalties in prior years. Enforcement actions are available for downloading and review on the Office of Enforcement webpage (<http://www.hss.energy.gov/Enforce/>).

Two notices of violation issued in 2008 warrant mention. First, DOE issued its first notice of violation in the worker safety and health area under 10 C.F.R. Part 851. In this enforcement case, a contractor was cited for four severity level I violations and one severity level II violation because of two events that revealed noncompliances associated with chemical safety and fire safety programs. Second, DOE issued a nuclear safety enforcement action for retaliation against an employee who raised safety concerns, in accordance with 10 C.F.R. Part 708, which provides for whistleblower protection. DOE considers Part 708 violations to be particularly significant, because they contravene the fundamental principles of a safety-conscious workplace and may affect employees' willingness to raise safety issues.

<sup>5</sup> Under Part 851, imposition of civil or contract penalties (for example award fee reduction) are allowed.

**Table 3-1. Summary of Enforcement Actions**

<b>Enforcement Action No.</b>	<b>Contractor – Site</b>	<b>Date Issued</b>	<b>Number and Severity Level</b>	<b>Final Civil or Contract Penalty</b>	<b>Civil Penalty Mitigation **</b>
<b>Nuclear Safety Notices of Violation</b>					
NEA 2007-07	Battelle Memorial Institute – Pacific Northwest National Laboratory	01/03/08	8-II	\$288,750*	\$151,250
NEA 2008-01	Babcock and Wilcox Technical Services Y-12, LLC – Y-12 National Security Complex	06/13/08	3-II 1-III	\$123,750	\$41,250
NEA 2008-02	CH2M-Hill Hanford Group, Inc. – Hanford Tank Farm	06/05/08	1-I 7-II 1-III	\$302,500	\$192,500
NEA 2008-03	Bechtel National Inc. – Hanford Site Waste Treatment and Immobilization Plant	09/15/08	1-II	\$41,250	\$13,750
NEA 2008-04	Bechtel National Inc. – Hanford Site Waste Treatment and Immobilization Plant	12/03/08	1I 6-II 2-III	\$385,000	\$165,000
<b>Worker Safety and Health Notices of Violation</b>					
WEA 2008-01	Battelle Energy Alliance –Idaho National Laboratory	06/20/08	4-I 1-II	\$250,000	
Totals			6-I 25-II 4-III	\$1,391,250	\$563,750

\* Civil penalty waived by statute.

\*\* Details regarding the mitigation for these enforcement actions are discussed in the applicable notices of violation. The amounts shown could have been assessed against the contractor, in addition to the final civil penalty in the preceding column, but were mitigated because of positive actions by the contractor, such as self-reporting or effective corrective actions.

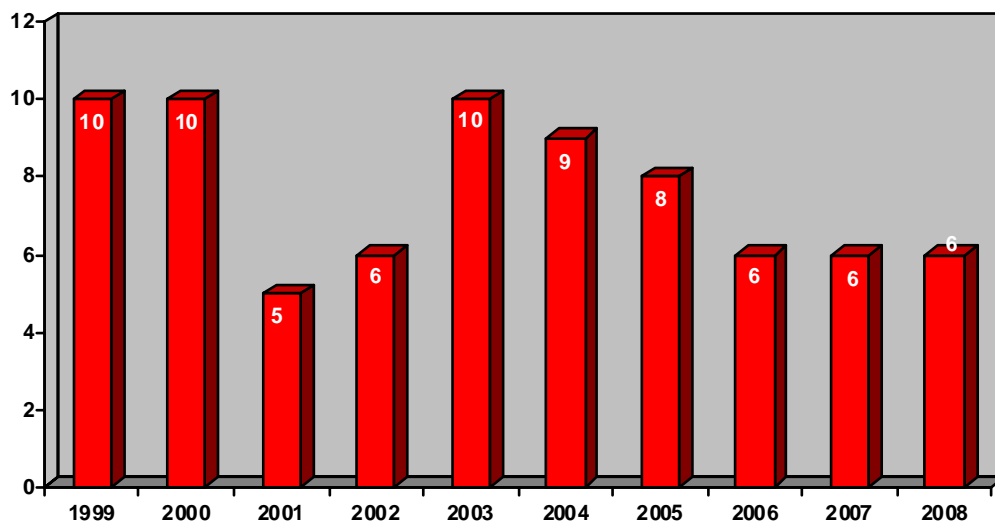


Figure 3-3. Number of Enforcement Actions

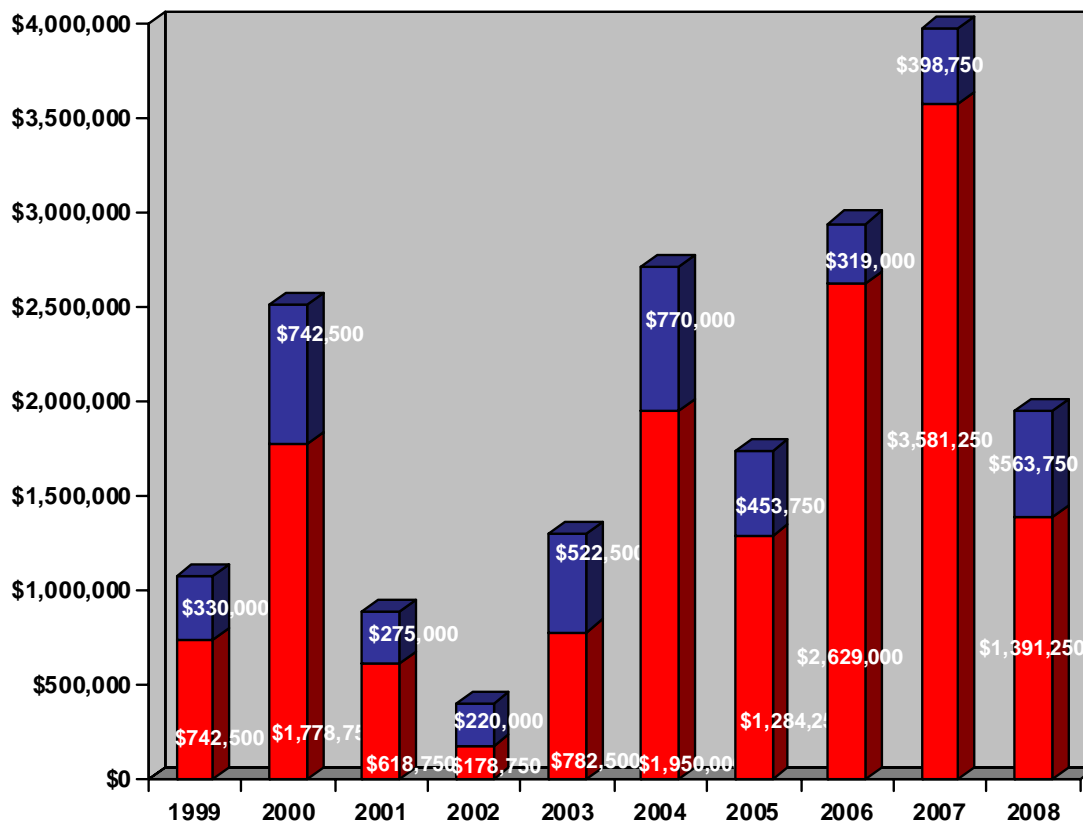


Figure 3-4. Final Civil/Contract Penalty Amounts and Amount Mitigated



Some of the penalties indicated in Figure 3-4 were waived by statute. For 2008, the Office of Enforcement issued one notice of violation that waived civil penalties. The Energy Policy Act of 2005 repealed the exemption from civil penalties for seven listed institutions and substituted a provision that caps civil penalties for a contract entered into on or after August 8, 2005 with a “not-for-profit” contractor, as defined by statute. The Office of Enforcement anticipates that the amendment to 10 C.F.R. Part 820 in response to these statutory changes will be published as a final rule in the Federal Register in the spring of 2009.

### **Compliance Orders**

In accordance with enforcement regulations, the Secretary of Energy may issue a compliance order that requires action to correct noncompliant conditions. The Office of Enforcement devoted significant attention to monitoring compliance with a Secretarial Compliance Order that was issued in July 2007 under 10 C.F.R. Part 824. Specifically, the Secretary directed the contractor for the Los Alamos National Laboratory – Los Alamos National Security, LLC – to remediate deficiencies that contributed to a breach of classified information security controls and to correct longstanding deficiencies associated with classified information security, and classified and unclassified cyber security programs. Through the quarterly meetings mandated by the compliance order, the Office of Enforcement monitored the progress of each of the 14 compliance order action items. Los Alamos National Laboratory reported that the actions were completed by the requisite December 12, 2008, completion date, and the Los Alamos Site Office has formally validated completion of the required actions.

### **Special Report Orders**

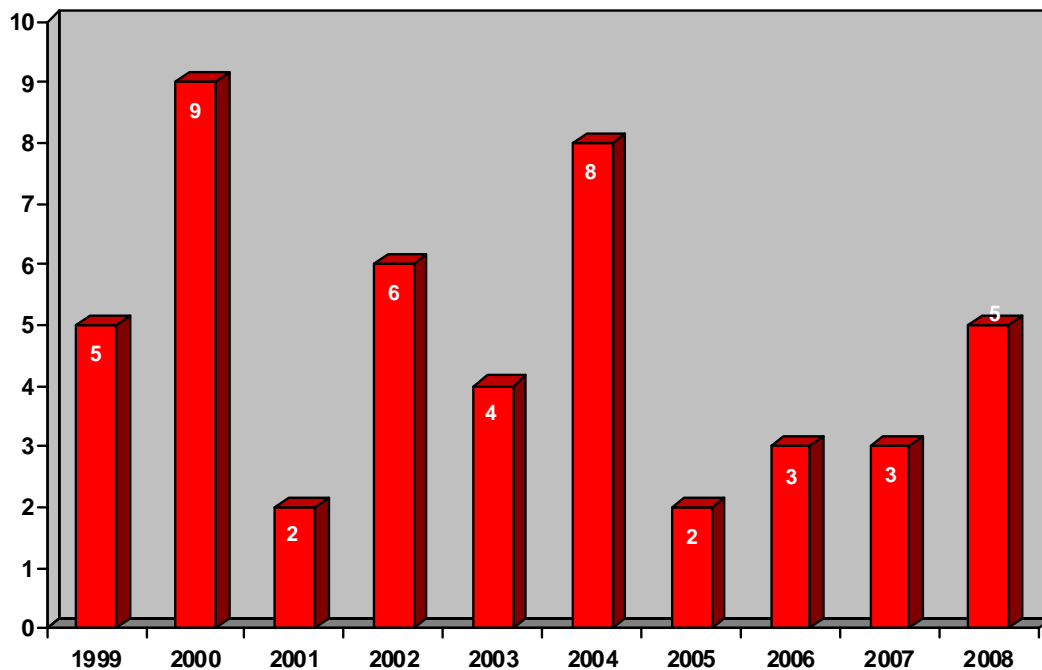
The Office of Enforcement has authority to issue special report orders under 10 C.F.R. Section 820.8(b), which requires a contractor to report on the status of safety programs and planned corrective actions for events. The Office of Enforcement issued a special report order in January 2008 for Los Alamos National Laboratory, managed by Los Alamos National Security, LLC. The special report order required Los Alamos National Laboratory to report on corrective action plans for two events that resulted in radiation exposures to workers, including actions to address the organizational and cultural deficiencies that contributed to the event. Throughout 2008, the Office of Enforcement monitored the status of corrective actions and operational events at Los Alamos National Laboratory and assessed the effectiveness and timeliness of corrective actions.

### **Enforcement Letters**

DOE issues enforcement letters to notify contractors of significant concerns that, if not addressed, could lead to notices of violation. Three enforcement letters were issued to contractors in May 2008 to address classified information security concerns. The Office of Enforcement’s concerns stemmed from an analysis of security incidents across the DOE complex in 2007, as reported in SSIMS. In two of the cases, the Office of Enforcement identified noncompliances involving classified emails transmitted by unapproved methods. In one case, not only were classified emails sent by unapproved methods, but there was also a failure to properly implement classified cyber security requirements and improper handling and storage of classified information. In all three cases, the enforcement letters raised questions about the effectiveness of the contractor’s causal analysis process and the effectiveness of corrective actions taken to prevent recurrence.

The Office of Enforcement also issued enforcement letters in the areas of worker safety and health and nuclear safety in 2008. An enforcement letter was issued to Los Alamos National Security, LLC addressing multiple programmatic safety significant issues associated with the Los Alamos National

Laboratory’s worker safety and health program. An enforcement letter was also issued to Bechtel BWXT Idaho, LLC that reflected the results of an investigation (which did not result in an enforcement action) and outlined the positive results of a follow-up program review of the nuclear safety regulatory compliance assurance program. Figure 3-5 shows the history of enforcement letters issued by DOE.



**Figure 3-5. Number of Enforcement Letters**

### **Program Reviews**

The Office of Enforcement conducts program reviews of contractor processes for identification, screening, reporting, and correction of issues. The purpose of these reviews is to ensure that contractors apply a sound process to identify noncompliances, make proper decisions on reportability, and undertake timely steps to correct noncompliances. With regard to contractors’ assessment processes, the Office of Enforcement’s limited review focuses on their effectiveness in identifying issues and on specific improvements in those processes.

In 2008, the Office of Enforcement implemented an enhanced program review process, which was developed in 2007 and provided for IPRs that examine processes in all three enforcement functional element disciplines (i.e., nuclear safety, worker safety and health and classified information security). The Office of Enforcement performed IPRs of three contractor organizations in 2008. In each of these reviews, the results showed that the contractor processes had the required elements and were generally adequate, and a number of program strengths were evident at all three programs; for example, some sites had improved processes for tracking and reporting security weaknesses. However, weaknesses that warranted increased management attention were identified. For example, two contractor programs did not have formal documentation describing the integration of 10 C.F.R. Part 824 with the existing enforcement programs.

## **4. ENFORCEMENT ACCOMPLISHMENTS AND FOCUS AREAS**

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The Office of Enforcement accomplishes its mission by means of a broad spectrum of activities in addition to enforcement investigations and the issuance of enforcement actions. These activities support effective communication, share lessons learned, and promote improvement within DOE and the contractor community. In addition, the Office of Enforcement has gained knowledge about the status of worker safety, nuclear safety, and classified information security programs across DOE and shared important lessons learned about enforcement program activities, with the field, at DOE headquarters, and within the Office of Enforcement. This knowledge is used to identify focus areas for further improving the enforcement program, including both internal (focused on strengthening the Office of Enforcement's internal infrastructure and capabilities) and external (focused on interfaces with field elements and other external stakeholders) focus areas.

This section describes program accomplishments and focus areas for each of the three major enforcement functional elements (worker safety and health, nuclear safety, and classified information security) and for the cross-cutting and programmatic functions that support all three programs. In all of these areas, the Office of Enforcement has received the full support and encouragement of HSS senior management, including the Chief Health, Safety and Security Officer. This support has enabled the Office of Enforcement to perform its mission, implement the new enforcement functional elements, lay the foundation for a successful program that can respond to evolving DOE needs, and perform multiple concurrent enforcement investigations and related actions.

### **Worker Safety and Health**

Office of Worker Safety and Health Enforcement accomplishments in 2008 included:

- Issuing the first enforcement action for worker safety noncompliances under 10 C.F.R. Part 851.
- Issuing the first enforcement letter for multiple programmatic worker safety significant issues.
- Completing an investigation of an event that involved noncompliances by three parties: a DOE contractor and two tiers of subcontractors.
- Hiring new staff members to provide the technical capability to perform requisite enforcement activities and investigations.

Office of Worker Safety and Health Enforcement focus areas for 2009 and beyond include:

- Continuing efforts that were initiated in 2008 to clarify the applicability of Part 851 to "vendors."
- Continuing educational and outreach efforts regarding worker safety and health enforcement (e.g., small business program managers meetings, HSS Focus Group meetings, EFCOG ES&H working group and subgroups).

- Providing more feedback on consistency in NTS reportability determinations and NTS report quality through IPRs, worker safety and health focused program reviews, and EFCOG working group sessions.
- Partnering with the HSS VPP as a means to increase opportunities for Office of Enforcement field presence and interfaces with VPP applicants, participants, and evaluation team members to continue to foster common expectations for DOE safety performance and compliance.

## **Nuclear Safety**

Office of Price-Anderson Enforcement accomplishments in 2008 included:

- Conducting four nuclear safety investigations and issuing five enforcement actions in 2008 (including one that was completed in 2007 and issued in early 2008).
- Hiring new staff members with significant technical expertise to perform requisite enforcement activities and investigations.
- Monitoring the status of the Los Alamos National Security Special Report Order, including significant efforts to review subsequent events.
- Interfacing with contractors through various mechanisms, including conference calls and program reviews, with a particular focus on contractors that had relatively low numbers of NTS reports to determine the reasons for this low level of reporting.

Office of Price-Anderson Enforcement focus areas for 2009 and beyond include:

- Publishing (in the Enforcement Process Overview) revised criteria for consent orders to allow additional flexibility in their use and application.
- Increasing proactive use of enforcement letters and severity level III notices of violation for lower-significance issues and precursors as a means to promote effective nuclear safety practices and reduce the number of high-significance issues and events.
- Coordinating with the HSS policy and operating experience groups to develop better performance metrics.
- Continuing to emphasize (through enforcement activities and IPRs) the improvement of contractor assessment, causal analysis, and corrective action programs.

## **Security**

Office of Security Enforcement accomplishments in 2008 included:

- Monitoring the 14 action items contained in the Secretarial Compliance Order for Los Alamos National Laboratory, including participation in quarterly meetings.
- Issuing three enforcement letters to promote improvements in the protection of classified information. These letters stemmed from an Office of Enforcement analysis of classified information security incidents across the DOE complex in 2007, as reported in SSIMS.

- Revising and updating the implementation guidance for classified information security enforcement, developing SOPs that address the Office of Enforcement's coordination with other government agencies (e.g., Department of Justice, Federal Bureau of Investigation), and developing the Office of Security Enforcement's processes for screening and trending classified information security incidents.
- Communicating with members of the security and safety community through various mechanisms to enhance understanding of security enforcement requirements and processes. Mechanisms included: working with DOE program offices, field elements, and contractors to communicate and reinforce expectations concerning the identification, reporting, and trending of security incidents; assisting with the self-reporting of noncompliances through the incidents of security concern program and SSIMS; attending and supporting EFCOG security working group activities; and developing and providing enforcement coordinator training.

Office of Security Enforcement focus areas for 2009 and beyond include:

- Implementing recent SSIMS enhancements that enable contractors to self-report security noncompliances resulting from contractor self-assessments. This new capability is intended to assist and encourage contractor organizations to develop internal assessment processes that identify deficiencies and noncompliances, report those noncompliances, and provide the status of corrective actions. Contractors can benefit from the substantial incentive of mitigation of civil penalties for self-identifying and reporting noncompliances and implementing prompt corrective actions to prevent recurrences. This approach is consistent with the Office of Enforcement's goal of encouraging effective self-assessments and corrective actions as a means of improving classified information security at DOE sites.
- Implementing the security-significance database which is a tool for systematically analyzing site-specific and complex-wide security incident data to identify trends and potential security-significant noncompliances. The information will be used to prioritize enforcement resources and improve the process of selecting potential violations for investigation. Specifically, the Office of Security Enforcement will use the tool to systematically evaluate site performance data, with a focus on longstanding deficiencies and the effectiveness of corrective actions in preventing recurrence.
- Continuing to provide training on classified information security enforcement to DOE sites upon request. The Office of Security Enforcement has recognized a need for assistance training and communication with field organizations to ensure a proper understanding of 10 C.F.R. Part 824 provisions.

### **Cross-cutting and Programmatic**

In addition to the above accomplishments for the specific enforcement element, the Office of Enforcement's cross-cutting and programmatic accomplishments in 2008 included:

- Performing three IPRs in 2008. These are the first program reviews performed by the Office of Enforcement that concurrently address all three enforcement elements (worker safety and health, nuclear safety, and classified information security). The goal of IPRs is to ensure that contractors have effective programs for identifying noncompliances, determining the causes and the extent of the condition of noncompliances, and implementing effective corrective actions to prevent

recurrence. Integrating the reviews of the three enforcement areas minimizes the impact on sites while promoting effective integration of enforcement coordinator functions.

- Devoting major efforts and management attention to strengthening the Office of Enforcement's infrastructure and processes to better support a multidisciplinary enforcement program that covers the full range of DOE sites and activities. To this end, the Office of Enforcement has developed or refined its processes and procedures to make them more rigorous and useful, including the *Enforcement Process Overview* and various supporting HSS SOPs and enforcement internal SOPs. The Office of Enforcement also focused on hiring new staff to strengthen its capability to perform investigations and other activities. Several new hires are now on board, and agreements are in place with other new hires to start in the near future. Further, the Office of Enforcement has reviewed the practices of comparable agencies that issue fines, such as the Nuclear Regulatory Commission and the Occupational Safety and Health Administration, to verify that the Office of Enforcement's fines are consistent.
- Devoting extensive attention to supporting and communicating with program offices, field elements, and contractor management. The Office of Enforcement revised the Annual Enforcement Coordinator Workshop to emphasize expectations for coordinators and cover routine activities and functions. Also, Office of Enforcement personnel routinely participated in HSS Focus Group meetings to foster substantive discussion of implementation issues related to 10 C.F.R. Part 851 among DOE stakeholders (e.g., program offices, labor unions, the National Institute of Environmental Health Sciences, and the Hazardous Materials Management and Emergency Response Training and Education Center). Office of Enforcement personnel also participated in and presented at numerous conferences and meetings, including the keynote speech at the EFCOG ES&H Working Group meeting and participating in a DOE Small Business Program Manager's meeting.
- Providing mechanisms for workers at DOE sites or their representatives to formally report safety or security violations and request that an investigation be performed. Specifically, the Office of Enforcement posted DOE Form 440.2, *Request for Investigation or Inspection of Safety or Security Violations*, on the DOE directives website. In 2008, the Office of Enforcement received its first two formal requests for investigation of worker safety noncompliances.

In addition to the above focus areas for the specific enforcement elements, the Office of Enforcement's cross-cutting and programmatic focus areas for 2009 and beyond include:

- Further strengthening the enforcement program to reduce recurrent noncompliances and promote improvements in DOE safety and security. In developing further program enhancements, the Office of Enforcement will consider the results of recent external reviews (e.g., by the Nuclear Regulatory Commission and the Government Accountability Office), including their favorable comments and opportunities for improvement. Also, the Office of Enforcement will support the broader HSS effort to strengthen both enforcement and oversight functions by integrating the enforcement function with HSS's independent oversight function in a manner that promotes the overarching DOE and HSS goal of improving DOE site security and ES&H programs. Specific Office of Enforcement activities include a review of the use of enforcement tools (for example stiffer penalties for recurring events, consent orders), increased focus on contractor self-assessments and quality assurance, increased use of enforcement letters, and more active internal coordination with Independent Oversight in identifying focus areas for increased enforcement and oversight attention. One such focus area is to ensure that managers and workers across the DOE complex understand their respective rights and responsibilities under 10 C.F.R Part 851.

- Continuing to perform IPRs. Based on lessons learned from the 2008 IPRs, the Office of Enforcement will refine its data collection, reporting, and other processes. In addition, IPRs will continue to evaluate contractor and field element performance in such areas as analysis and trending of safety and security events and the reporting of noncompliances.
- Working with other HSS offices to issue amendments to enforcement regulations. The amendment to 10 C.F.R. Part 820 is in process and upon publication in the Federal Register, will bring the Rule into line with the Energy Policy Act of 2005. The Office of Enforcement will also continue to work with the HSS Office of Worker Safety and Health Policy on revisions to 10 C.F.R. Part 850 and is working with General Counsel to draft rulemaking to increase civil penalties consistent with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990.
- Continuing to work on actions that will improve the timeliness of enforcement actions. For example, the Office of Enforcement will consider not holding enforcement conferences when there are no significant disagreements on the facts and no issues that need additional discussion. Other measures include continuing to develop an enhanced streamlined Investigation Report template and increasing the issuance of enforcement letters, notices of violation for severity level III violations, and consent orders.
- Continuing communication of enforcement activities and lessons-learned through presentations at various workshops, meetings with EFCOG working groups, and the Office of Enforcement's Annual Enforcement Coordinator Workshop. For example, Office of Enforcement personnel have been requested to speak at the annual Waste Management Conference (WM2009) in March 2009 and the 10<sup>th</sup> Annual Small Business Conference, Exposition and Matchmaking Forum in August 2009.
- Further enhancing staff capabilities. The Office of Enforcement will ensure that recently hired staff are fully trained and mentored to ensure their understanding of the enforcement program process and management expectations. In addition, the Office plans to hire additional personnel to fill remaining vacancies. Additional staff members will enhance the Office of Enforcement's ability to perform multiple concurrent activities.