



Enforcement Process

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Enforcement Process



Objectives:

- **Discuss the steps in the enforcement process**
- **Identify Enforcement Coordinator roles and responsibilities associated with the process**
- **Distinguish between the Price-Anderson Nuclear Safety Program and the Worker Safety & Health Program**



Steps of the Enforcement Process



- **Evaluations and investigations of potential rule violations**
- **Informal enforcement conference**
- **Post-conference DOE meeting**
- **Enforcement outcome**
- **Enforcement action monitoring/closure**



Evaluation and Investigation of Potential Rule Violations



- **Enforcement reviews various sources (internal and external) to identify potential noncompliances worth investigating. Field and Program office colleagues make recommendations.**
- **Enforcement staff meetings sort out relative importance of each matter that is a candidate for investigation.**
 - structured process for determining candidates for investigation
- **Enforcement investigator is assigned the most consequential noncompliances and with input from the DOE Field and Program Elements, determines a path forward.**



Evaluation and Investigation of Potential Rule Violations (*cont'd*)



- **The decision is typically based on the following:**
 - The actual or potential safety significance
 - History of contractor noncompliances
 - Proactive actions by the contractor, including identification and reporting
 - Management involvement
 - Willful violation or falsification of material

- **Review of evidence to noncompliance may result in a recommendation for proceeding with full investigation or DOE may track to closure.**



Examples for the Enforcement Process



➤ **Enforcement Process Question A:**

- A (DOE or Contractor) Coordinator, during routine review of ORPS, notices an adverse trend related to Safety Basis compliance. The adverse trend could be a programmatic or recurring problem. What actions should the Coordinator take?



Evaluation and Investigation of Potential Rule Violations (*cont'd*)



- **Investigation of facts could lead to the following conclusions:**
 - There is a reasonable basis that the violation did occur and enforcement action should be considered; or
 - Contractor actions were substantially proactive and the safety significance is low such that no enforcement action is required



Evaluation and Investigation of Potential Rule Violations (*cont'd*)



➤ **Notification of an Investigation**

- “Segregation of costs” letter sent by Office of Enforcement in compliance with the Major Fraud Act
- Usually includes document request
- NNSA package includes notification to the Administrator

➤ **Investigation can include the following:**

- Information gathered via telephone, e-mails, information request and document review
- Onsite review including worker and management interviews, document review, and first-hand examination of the area



Examples for the Enforcement Process



➤ **Enforcement Process Question B:**

– Office of Enforcement plans to perform an onsite investigation at Contractor X and sends an interview list and schedule to the Contractor Coordinator. The Office of Enforcement notifies the DOE Coordinator of this action. What actions do the Coordinators take?



Evaluation and Investigation of Potential Rule Violations (*cont'd*)



- **Enforcement Coordinators' Role – DOE and Contractor**
 - Focal point: collect information or coordinate the collection of noncompliance information
 - Assure that relevant information is distributed appropriately within the organization
 - Coordinate the identification of personnel for technical support when necessary to bring an issue to closure
 - Facilitate coordination and scheduling of onsite investigations



Evaluation and Investigation of Potential Rule Violations (*cont'd*)



DOE Enforcement Coordinator's Role – Additional Responsibilities

- **Serves as primary and first point of contact at the site or in the Program Office**
- **Determines consensus position within the Field/Program Element regarding the safety significance of the issue and the adequacy of corrective actions**
- **Reviews/comments on draft investigation summaries**



Enforcement Conference



- **Held subsequent to issuance of investigation summary report**
- **Convened by Office of Enforcement for those cases in which further enforcement action is being considered**
- **Provides forum for contractor to respond to the investigation findings, provide its perspective on safety significance, and discuss potential mitigating factors**



Enforcement Conference (*cont'd*)



- **Confirms or disputes facts and circumstances of the potential violations**
- **Contractor can waive an enforcement conference**



Enforcement Conference (*cont'd*)



“Typical” contractor presentation –

- **Senior management introduction and perspectives and commitment to safety**
- **Discussion of investigation findings, causal analysis, general agreement or disagreement, safety perspectives, and any factual inaccuracies**



Enforcement Conference (*cont'd*)



- **Status of corrective actions**

- **Potential areas of mitigation**
 - Self-identification and reporting
 - Timely and effective corrective actions

- **Closure by senior management**



Enforcement Conference (*cont'd*)



- **Based on conference and post-conference DOE meeting, Office of Enforcement determines appropriate enforcement outcome with input from the DOE Field and Program Element**
- **The Director makes the final decision, except in NNSA matters when the Director makes recommendation to the Administrator**



Examples for the Enforcement Process



➤ **Enforcement Process Question C:**

– Office of Enforcement notifies Contractor X of an Enforcement Conference. The Enforcement Conference is held, and the Office of Enforcement issues a PNOV to the contractor.

1. What actions should the coordinators take after the Notice of Scheduled Conference is issued?
2. What actions should the coordinators take in the event a PNOV is issued?



Enforcement Conference (*cont'd*)



Contractor and DOE Enforcement Coordinators' Role

- **Actively participate in the dialogue between DOE and the contractor to ensure the following:**
 - The facts and technical issues surrounding the violation are documented and understood
 - The actual or potential adverse impact on safety is properly considered
 - The corrective actions that are proposed to rectify the violation are properly considered and are effective to address the root cause



Post Conference DOE Only Meeting



DOE Enforcement Coordinator's Role

- **Provide input in determining the appropriate enforcement activities, including the following:**
 - Determination of severity level
 - Application of mitigation factors or escalation
 - Issuance of a Notice of Violation or Notice of Violation with civil penalty
 - Closure of the issue with no further enforcement action



Post Conference DOE Only Meeting (*cont'd*)



Severity Levels (Nuclear Safety)

- **Level 1 - Violations involving actual or high potential for adverse impact on safety (most significant)**
- **Level 2 - Contractor lack of attention to responsibilities that could lead to adverse impact on safety**
- **Level 3 - Less serious violations but are of more than a minor concern**



Post Conference DOE Only Meeting (*cont'd*)



Civil Penalties (Nuclear Safety)

- **Maximum of \$110,000 per violation per day**
- **Severity Level I – 100% (of maximum)**
- **Severity Level II – 50%**
- **Severity Level III – 10%**



Post Conference DOE Only Meeting (*cont'd*)



Severity Levels (Worker Safety)

- **Level 1 - Violations involving potential for death or serious injury**
- **Level 2 - Contractor lack of attention to responsibilities that could lead to adverse impact on safety**
- **Level 3 - Less serious violations but are of more than a minor concern**



Post Conference DOE Only Meeting (*cont'd*)



Civil Penalties (Worker Safety)

- **Maximum of \$70,000 per violation per day**
- **Severity Level I – 100% of maximum**
- **Severity Level II – 50% of maximum**



Post Conference DOE Only Meeting (*cont'd*)



The Worker Safety Parallel Regulatory Universe

- **Director authorized to seek contract fee reductions in lieu of civil penalties**
- **Statute authorizes contract penalties up to amount of annual fee collected by contractor**



Post Conference DOE Only Meeting (*cont'd*)



- **Severity Level determination considers the following:**
 - Actual or potential impact on safety (primary consideration)
 - Culpability of contractor
 - Duration of violation
 - History of similar violations
 - Isolated or multiple occurrences
 - Position, training and experience of individual(s) involved
 - Prior notice of potential problem
 - Willful violations
 - Other contributing factors



Post Conference DOE Only Meeting (*cont'd*)



Less Significant Violations –

- **Isolated minor violations will not result in issuance of a Notice of Violation**
- **Violations can be evaluated in the aggregate and a single (higher) severity level assigned**



Post Conference DOE Only Meeting (*cont'd*)



Application of Mitigation/Escalation Factors –

- **Prompt identification and reporting by contractor
(up to 50% decrease)**
- **Timeliness and effectiveness of corrective actions
(can decrease or increase up to 50%)**



NNSA Process Differences



- **Specific protocols were established in MOU of January 2001.**
- **Office of Enforcement issues an investigation notification memo to the NNSA Administrator.**
- **Office of Enforcement subsequently notifies local NNSA office and then the site contractor.**



NNSA Process Differences (*cont'd*)



- **Office of Enforcement recommends enforcement action to NNSA Administrator.**
- **NNSA Administrator has signature authority on enforcement actions.**
- **We expect this process to work the same way for Worker Safety as it works for Nuclear Safety**



Part 708 Process Differences



- **Decisions rely on hearing records already created, including law judge opinions developed at the DOE Office of Hearings and Appeals or the Department of Labor.**
- **Contractor is given the opportunity to supplement the record.**
- **Since the documents and testimony speak for themselves, enforcement conferences are generally expected to be unnecessary.**



Enforcement Outcome



- **Preliminary Notices of Violation**
- **Enforcement Letters**
- **Special Report Orders**
- **Consent Orders**
- **Compliance Orders**



PNOV/FNOV



- **Director issues Preliminary Notice of Violation (except NNSA)**

- **Contractor accepts violations in PNOV**
 - Can accept as written and pay civil penalty (if imposed)
 - Can accept, but request further mitigation
 - PNOV becomes a Final Order without further action



PNOV/FNOV (*cont'd*)



- **Contractor contests all or part of PNOV**
 - Office of Enforcement can accept the basis, modify PNOV as appropriate and issue a Final Notice of Violation or
 - Office of Enforcement can reject the basis and issue a Final Notice of Violation (FNOV)
 - Process, based on 10 CFR 820, should function the same way for Worker Safety as for Nuclear Safety

- **Contractor option after receiving FNOV**
 - Accept and pay civil penalties
 - Request adjudication when civil penalties are imposed



Enforcement Letters



- **Not considered an enforcement action**
- **Used to communicate Office of Enforcement view on noncompliance matters, both positive and negative**
- **Intended to direct contractors to the desired level of safety performance**
- **Signed and issued by the Director**



Special Report Order



- **Not considered an enforcement action**
- **Requires the submission of information relating to a DOE Nuclear Safety requirement**
- **Utilized when contractors are less than fully cooperative in an investigation**
- **Signed by the Director or NNSA Administrator**



Consent Order



- **Considered a remedy in lieu of an enforcement action**
- **Authorized by 10 CFR 820.23 and 10 CFR 851.41**
- **Contractor must meet criteria in Enforcement Guidance Supplement 03-01 to be a candidate:**
 - Confidence in contractor built over time
 - Timely and comprehensive corrective action program
 - History of assessment based problem identification



Consent Order *(cont'd)*



- **Documents the terms of a settlement between DOE and the contractor relating to an enforcement proceeding**
- **Signed and issued by the Director**



Compliance Order



- **Authorized by 10 CFR 820, Subpart C and 10 CFR 851.4**
- **Issued by the Secretary of Energy**
- **Identifies and mandates a remedy for a situation violating or potentially violating the Atomic Energy Act, or a DOE Nuclear Safety or Worker Safety and Health requirement**
- **Constitutes an additional violation for failure to comply**



Enforcement Actions Monitoring/Closure



Important:

Failure to implement corrective actions can result in additional enforcement action



Summary



The Enforcement Coordinator plays a pivotal role during all steps of the enforcement process