



DOE's Safety and Security Enforcement Program

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<http://www.energy.gov/ea/services/enforcement>

DOE's Safety and Security Enforcement Program

- Enforcement supports safety and security performance and is a vital mechanism in sustaining stakeholder confidence in DOE's self-regulating responsibilities under the Atomic Energy Act
- EA's Office of Enforcement administers DOE's Safety and Security Enforcement Program on behalf of the Secretary of Energy in three areas:
 - Nuclear safety (10 CFR Parts 820, 830 and 835)
 - Worker safety and health (10 CFR Parts 850 and 851)
 - Classified information protection (10 CFR Part 824)
- Application to DOE Prime Contractors (and subcontractors)
- Civil penalties for violations of Part 851 = \$97,000

DOE's Safety and Security Enforcement Program

- DOE's mission is accomplished through safety excellence, which includes compliance with regulatory requirements.
- Contractors are expected to provide a safe and healthful work environment, and to recognize and correct noncompliant conditions before worker injury or an event.
- Contractors perform critical self-evaluations and implement effective corrective actions to prevent recurrence.
- Workers are empowered to report safety and health concerns.
- DOE incentivizes these behaviors through discretion and mitigation.
- DOE's enforcement process functions as a deterrent.
- EA issues enforcement actions and penalties for safety-significant violations of Part 851.
- EA shares lessons learned from enforcement activities and improves training delivered by the National Training Center



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2019 Worker Safety and Health Enforcement Activities

Contractor – Location	Event	Outcome
Los Alamos National Security, LLC - Los Alamos National Laboratory	Employee exposure to low oxygen conditions	Notice of Violation
Consolidated Nuclear Security, LLC – Pantex	Employee exposure to toluene in paint booth	Enforcement Letter
National Technology and Engineering Solutions of Sandia, LLC and two subcontractors – Sandia National Laboratories	Three Electrical Safety Events	Notice of Violation and two Enforcement Letters
Nuclear Waste Partnership, LLC – Waste Isolation Pilot Plant	Heat stress-related events and chemical exposures	Investigation in progress
Triad National Security, LLC and subcontractor - Los Alamos National Laboratory	Two material handling injury events	Investigation in progress
Jefferson Science Associates, LLC - Thomas Jefferson National Accelerator Facility	Hazardous Energy Control Program	Investigation in progress
Consolidated Nuclear Security, LLC - Y-12 National Security Complex	Employee finger amputation	Investigation in progress



Retaliation Provisions

- 10 CFR Part 851:
 - Contractors are required to...establish procedures for workers to report without reprisal job-related fatalities, injuries, illnesses, incidents, and hazards and make recommendations about appropriate ways to control those hazards
 - Workers have the right to...express concerns related to worker safety and health
- 10 CFR Part 820:
 - An act of retaliation (as defined in 10 CFR 708.2) by a DOE contractor, prohibited by 10 CFR 708.43, that results from a DOE contractor employee's involvement in an activity listed in 10 CFR 708.5(a) through (c) may constitute a violation of a DOE Nuclear Safety Requirement if it concerns nuclear safety.

Acts of retaliation involving worker safety and health or nuclear safety issues are considered violations of Parts 851 and 820, respectively, and could result in the imposition of civil or contract penalties through the issuance of a PNOV to a DOE contractor.



Retaliation Cases Considerations

- The Office of Enforcement considers many factors when evaluating cases of alleged retaliation:
 - Safety nexus - many retaliation claims do not involve issues within the scope of Parts 820 or 851
 - Status of claim - we avoid interfering with civil proceeding
 - Management level associated with the retaliation
 - Contractor procedures for evaluating employee concerns and their adherence to procedure
 - Contractor's response when retaliation is affirmed
- Decision on enforcement action is independent of the validity of the safety concern. The act of retaliation is itself a safety concern due to the chilling effect it has on employees' willingness to speak up about safety issues.
- The Office of Enforcement does not determine if retaliation has occurred or have the authority to order restitution for an employee; only to impose civil penalties when contractors violate regulations.



Sources of Retaliation Information

- DOE Office of Hearings and Appeals
- DOE Office of Inspector General
- Department of Labor's Whistleblower Protection Program
- Cases filed with Federal and state courts
- Worker requests for investigation
- Unions
- Media
- Reported by contractors into the Noncompliance Tracking System



Enforcement Cases Involving Retaliation

Contractor – Location	Outcome
Savannah River Nuclear Solutions, LLC – Savannah River Site	Part 851 Preliminary Notice of Violation – 2017
Computer Sciences Corporation – Hanford Site	Part 851 Pending before the DOL/ARB
Bechtel National, Inc. – Hanford Site	Part 820 Preliminary Notice of Violation - 2008
Safety and Ecology Corporation – Portsmouth	Part 820 Preliminary Notice of Violation - 2005
Westinghouse Savannah River Company – Savannah River Site	Part 820 Enforcement Letter – 2004



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Avenues for Reporting Safety and Health Concerns within DOE



Name of Program	Authority	Responsible Organization	Covered Employees	Scope	More Information
DOE Employee Concerns Program	DOE Order 442.1A	DOE Office of Environment, Health, Safety, and Security	DOE Federal and contractor employees	Provides an independent avenue to raise any concern related, but not limited, to the environment, safety, health, and management.	https://energy.gov/eis/ehss/ehss-employee-concerns-program
DOE Contractor Employee Protection Program	10 C.F.R. Part 708	DOE Office of Hearings and Appeals	DOE contractor employees	Establishes criteria and procedures for the investigation, hearing, and review of allegations from DOE contractor employees of employer reprisal resulting from a protected employee disclosure.	https://energy.gov/eis/ehss/ehss-employee-concerns-program
Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information	41 U.S.C. § 4712	DOE Office of Inspector General	DOE contractor employees	Prohibits retaliation against contractor employees for disclosing information that the employees reasonably believe is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority, a substantial and specific danger to public health and safety, or a violation of law, rule, or regulation relating to the contract. Provides for filing and investigating complaints of reprisal and for remedies for reprisal.	https://energy.gov/eis/ehss/ehss-employee-concerns-program
Energy Reorganization Act (ERA): Employee Protection	42 U.S.C. § 5851 and 29 C.F.R. Part 24	Department of Labor/OSHA	DOE Federal and contractor employees	Prohibits retaliation against any employee who reports violations or refuses to engage in violations of the ERA or the Atomic Energy Act.	https://www.whistleblowers.gov/
DOE Worker Safety and Health Program	10 C.F.R. Part 851	DOE Office of Enforcement	DOE contractor employees	Requires DOE contractors to provide processes for employees to report safety concerns without fear of reprisal and permits employees to request investigations of alleged violations of Part 851.	https://energy.gov/eis/ehss/ehss-employee-concerns-program
Employee Requests for Inspection by OSHA and Requirements Prohibiting Retaliation	29 U.S.C. § 657 and 29 C.F.R. Part 1977	Department of Labor/OSHA	DOE contractor employees	Provides employees and their representatives the right to file a complaint and request an OSHA inspection of their workplace if they believe there is a serious hazard or their employer is not following OSHA standards. Prohibits employer discrimination against employees for filing a safety and health complaint.	https://www.osha.gov/workers/file-complaint.html
Employee Reports of Unsafe or Unhealthy Working Conditions	29 C.F.R. § 1960.28 and Executive Order 12196	Department of Labor/OSHA	DOE Federal employees	Establishes provisions for employees to file reports regarding hazardous and/or unhealthy working conditions without reprisal.	https://www.ea.doe.gov/ehsp/
Worker Protection Program for DOE (Including NNSA) Federal Employees	DOE Order 440.1B	DOE Offices	DOE Federal employees	Requires DOE elements to provide employees with the right to express safety concerns without reprisal.	https://energy.gov/eis/ehss/ehss-employee-concerns-program

<https://www.energy.gov/ea/request-investigation-or-inspection-safety-or-classified-information-security-violations>



Request for Investigation Part 851.40(c)

Any worker or worker representative may request that the Director initiate an investigation or inspection...relating to the scope, nature and extent of compliance with 851.

DOE F 440-2
Created Date: (3/11/2015)

U.S. Department of Energy Request for Investigation or Inspection of Safety or Classified Information Security Violations

This form is provided for use by any U.S. Department of Energy (DOE) contractor employee or representative thereof who (1) believes that a violation of a DOE safety regulation or DOE classified information security regulation or requirement has occurred and (2) requests that the DOE Office of Enforcement and Oversight initiate an inspection or investigation into the violation. This form is not intended for use in filing complaints that do not involve a violation of DOE regulations. Please be advised that information in your request, except your name and other identifying information about you, if you have indicated below that your request is to remain anonymous or confidential, will be provided to the appropriate DOE Headquarters and field office organizations as their cooperation will be needed in evaluating the request.

DO NOT use this form to report an emergency or immediately life-threatening condition.
DO NOT include any classified information.

1. DOE Site: _____

2. I am an (select one): Representative of Employees Employee

3. I work for/represent: _____

4. Is your request related to your employer or another contractor?
 Employee Other Contractor

If other, specify the contractor: _____

5. Specific location where the violation or condition exists or occurred (e.g., building, facility, work area, laboratory/room number): _____



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Additional Information

- Enforcement Process Overview (EPO)
- Enforcement Coordinator Handbook (ECH)

<http://www.energy.gov/ea/services/enforcement/enforcement-program-and-process-guidance-and-information>

- DOE/NNSA Enforcement Outcomes

<http://www.energy.gov/ea/services/enforcement>

