



Date: December 11, 2009

To: Steven L. Krahn,
Acting Deputy Assistant Secretary, Safety and Management
Operations, Environmental Management Office

Subject: Energy Facility Contractors Group (EFCOG) Comments
on Petition for Rulemaking; "10 CFR Part 851 Worker Safety and
Health Program: Safety-Conscious Work Environment" (74 FR 53190)

The Hanford Challenge petition, as stated, is directed at "ensuring that employees of the Department of Energy (DOE) and its contractors and subcontractors are free to raise concerns without fear of retaliation and reprisal against them". EFCOG fully agrees with the petitioner that the freedom of employees to raise safety concerns (without any fear of reprisal) is an important underpinning of the DOE and contractor safety mission. We further agree that employees, including subcontractor employees, at all levels of the organizations are and need to be relied upon to recognize and report safety concerns.

The proposed language is based on the Nuclear Regulatory Commission (NRC) model, a "Safety-Conscious Work Environment" (SCWE). Note however, that unlike current NRC application, the petitioner seems to desire the NRC guidance document on SCWE to find its way directly into DOE regulations. The NRC is clear in their policy guidance documents that a SCWE is expected, but it is **not** a regulatory requirement.

As expressed by the petition, there is a concern that employees currently cannot raise environmental, safety and health concerns outside of the existing whistleblower protections without fear of harassment, intimidation, retaliation, and discrimination. This simply is not true.

A new SCWE rule/order would essentially become redundant to the many existing DOE policies, standards, and Orders that enable employees to raise such concerns without any fears, and in short, would only add additional cost for implementation/validation with little or no added value to employees. The concern as expressed in the petition is not valid as employee protections are already guaranteed in 10CFR708. Additionally, the DOE continues to sustain an excellent safety performance record across all of its operations that remain orders of magnitude better than that achieved in commercial industry for the same work classification codes. The DOE also owns approximately 20 Voluntary Protection Program (VPP) sites that are required to observe the fundamental

tenets of worker engagement and management's commitment to safety. Clearly, contractor management teams all across the DOE "get it" and they are safeguarding DOE's most precious resource, our people.

A SCWE rule would also be contrary to the expectations established by the Deputy Secretary of Energy in his effort to streamline and remove duplication in the regulation of worker safety. Already in existence are a myriad of standards and rules that establish a continuous employee/management "safety conscious work environment" and ensure that all employees have the ability to bring forward their concerns (in name or anonymously) associated with the environment, safety and health aspects of their work place without fear of management retaliation or reprisal. Such standards and rules include:

- 10 CFR 708, DOE Contractor Employee Protection Program
- 10 CFR 820, (Appendix A) (2007) Energy / Department of Energy / Procedural Rules for DOE Nuclear Activities / General Statement of Enforcement Policy / Enforcement Letter
- 10 CFR 851, Worker Safety and Health Program
- Price-Anderson Amendments Act of 1988 (Pub. L. 100-49, August 20, 1988)
- DOE O 442.1A, Department of Energy Employee Concerns Program
- DOE O 440.1A Worker Protection Management For DOE Federal and Contractor Employees
- DOE M 442.1-1, Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety and Health
- 29 CFR 1960.28, Employee Reports of Unsafe or Unhealthful Working Environment
- 48 CFR 970.5223-1, Integration of Environment, Safety, and Health Into Work Planning and Execution
- DOE/EH-0433-0436, DOE's Voluntary Protection Program

Adding SCWE to the above list simply increases its length without adding any tangible value.

We recommend that if there is a need to reinforce the commitment to worker safety, zero tolerance for retaliation and the consequences to employers who do not follow these requirements, then DOE should update and reissue a policy statement by the Secretary of Energy under the DOE Directives Program. The DOE Policy, and associated orders and guides, could be reviewed for alignment with the NRC guidance and its implementation. Taking this action would promote consistency with what NRC is doing without compromising the effectiveness of the existing DOE programs and requirements, nor imposing additional administrative burden.