



Overview of the Noncompliance Tracking System (NTS) and 10 CFR 851 Reporting Thresholds

Kathy McCarty

Acting Director

Office of Worker Safety and Health Enforcement

May 2, 2007



General Approach to Enforcement



- **Outlined in Appendix B of 10 CFR 851**
- **Based on Existing Nuclear Safety Enforcement Approach**
- **Enforcement of 10 CFR 851 Will Be Conducted in a Similar Fashion**



Regulatory Basis for NTS



10 CFR 851, Appendix B:

“ DOE will establish effective administrative processes and positive incentives to the contractors for open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.”



Incentives for Reporting



- Reporting into NTS is *voluntary*

However.....



Incentives for Reporting



- **10 CFR 851 provides for up to 50% mitigation of enforcement penalties for prompt identification and timely self-reporting**



Incentives for Reporting



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%)**
- **Enforcement also has the authority to exercise discretion**



Self-Identification and Tracking Systems



10 CFR 851, Appendix B:

“Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount.”



Timeliness of Reporting



- **Prompt identification determined on a case by case basis**
- **Generally considered to be within 20 days of determination of noncompliance**
- **Events are viewed as self-disclosing – not usually subject to mitigation for self-identification**



NTS Reporting Guidelines



- **When in doubt, report (mitigation opportunity)**
- **Clear, factual, objective description of noncompliance**
- **Acceptable to reference ORPS report for event description**
- **Brief summary of the root causes, corrective actions, target and actual completion dates – graded approach to causal analysis**



Trial Reporting Period



- **Draft NTS thresholds were available for a 6-month trial reporting period ending November 2006**
- **Lessons learned available on HS-40 web site**
- **Thresholds subsequently modified**
 - **Removal of SC 4 Near Misses (10(3))**
 - **Other Significant Conditions category limited to Severity Level 1 type violations with “high” relative risk**



NTS Reporting To Date



- **Fewer reports than anticipated during trial period and since February 9, 2007**
- **Some reported events not linked to an identifiable noncompliance**
- **Some selected citations appeared incorrect, but it is more important just to report**
- **Misunderstanding of the General Duty Clause [10 CFR 851.10(a)(1)]**



Reporting Thresholds



- **Noncompliances Associated with Occurrences**
- **Other Reportable Conditions**
- **Noncompliance Meets or Exceeds Thresholds**
 - **Report to NTS**
- **Noncompliance Below Thresholds**
 - **“Report” to local or centralized site tracking system**



ORPS-Related Thresholds



- **Occupational Injuries and Illnesses [2A(1) – 2A(6)]**
- **Fires and Explosions [2B(1) – 2B(3)]**
- **Failure of Hazardous Energy Controls [2C(1) and (2)]**
- **Near Misses [10(3) SC's 1, 2, 3]**



Other Reportable Conditions



- **Repetitive Noncompliances - Same or closely similar noncompliance continues to occur, indicating hazard controls have not been effective**
- **Programmatic Issue - Occurrence of related (but not identical) noncompliances in a functional or programmatic area. Generally involves some weakness in administrative or management controls. Requires evaluation of deficiencies on a site-wide basis**



Other Reportable Conditions



- **Intentional Violation or Misrepresentation - Knowing and willful violation of WSH requirements; Alteration, concealment or destruction of documentation related to a violation of WSH requirements**
- **Other Significant Conditions - Severity Level I violations with “high” relative risk [similar to proposed ORPS 10(6)]**



Coordination Expectations



- **Office of Enforcement will work with DOE and Contractor Enforcement Coordinators to ensure accuracy and consistency of NTS reports**
- **DOE and Contractor Enforcement Coordinators should work together when significant events, hazardous conditions or trends exist and notify the Office of Enforcement as soon possible**



Additional Resources



- **Enforcement Program Plan**

http://www.hss.energy.gov/Enforce/programplan/epp_comments.cfm



Contact Information



Kathy McCarty

Acting Director,

Office of Worker Safety and Health Enforcement

kathy.mccarty@hq.doe.gov

(301) 903-0100