

From: [Faye Vlieger](#)
To: [Rios, Antonio A - OWCP](#); Steven.Markowitz@qc.cuny.edu; [DOL Energy Advisory Board Information](#); lwelch@cpwr.com
Subject: Re: Fwd: January 22, 2015, e-mail to Mr. Gregory Lewis
Date: Monday, July 11, 2016 2:16:06 PM

Here is the DOL memo on the Post 1995 Circulars:

https://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/ExposureLevels_Memo.pdf

Faye Vlieger
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On 7/11/2016 11:13 AM, Faye Vlieger wrote:

Hello All:

Here is the response I received from DOE regarding the Post 1995 exposure DOL Circulars.

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----- Forwarded Message -----

Subject: January 22, 2015, e-mail to Mr. Gregory Lewis
Date: Wed, 11 Feb 2015 18:48:49 -0500
From: Worthington, Pat <Pat.Worthington@hq.doe.gov>
To: Faye Vlieger <einvlieger@aol.com>
CC: Lewis, Gregory <Gregory.Lewis@hq.doe.gov>

Dear Ms. Vlieger:

This is in response to your January 22, 2015, e-mail to Mr. Gregory Lewis, Director Office of Worker Screening and Compensation Support, within the Office of Health and Safety (AU-10) and the Office of Environment, Health, Safety and Security (AU). We will address the other questions that you raised in your February 10, 2015, e-mail in

another e-mail to follow.

Specifically, in your January 22, e-mail you had questions about the two Department of Labor (DOL) circulars on why and how DOL made its determinations, and what specific documents or reference materials were used. We, at DOE, are aware of the two circulars you referenced, but we are not involved in the policy-making process at DOL; and we are in no position to comment on how and why these decisions were made. However, since the inception of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Department of Energy (DOE) has routinely provided DOL with documents and information on DOE activities, including DOE rules, directives, and technical standards that are required by DOE Federal and contractors for both radiological and non-radiological worker safety and health programs, control of hazards associated with work across the DOE complex, and improvement of overall safety and health performance. In addition, DOL has full access to information regarding DOE site compliance with these policies. DOE also assisted DOL with visiting all DOE sites to gather available information on historical and current hazardous material exposures at each site. The information gathered is placed in a database that helps claims examiners establish potential exposures to toxic substances as required under EEOICPA.

The safety of our current workers and safe execution of the DOE mission is a DOE line management responsibility. DOE published in the Federal Register title 10, Code of Federal Regulations, part 851 (10 CFR 851), *Worker Safety and Health Program*. The Rule provides current workers with reasonable assurance that they are protected from the hazards associated with their jobs. DOE AU stands ready to provide consultation, scientific subject matter expertise, and technical assistance related to a wide range of worker safety and health issues and to ensure that safety and health requirements are implemented at DOE worksites.

DOE is committed to the safety and health of its workforce, and we strongly believe that health and safety practices at DOE sites have improved considerably throughout DOE's history. We are constantly striving to ensure that workers remain healthy throughout their tenure at DOE.

Regarding the decision by DOL to differentiate between pre- and post-1995, it is a DOL determination and it applies only to EEOICPA. The DOL circular does not suggest that there were no longer any safety and health concerns on DOE sites after 1995. DOL's decision to differentiate between pre- and post-1995 was made because of changes in the worker safety and health policies and practices in the early 1990s that led to significant enhancements to worker safety and health at DOE complex wide. For specific questions and concerns about how and why DOL identified 1995 as the year to establish a demarcation in the way that claims are adjudicated, we suggest that you contact DOL.

Your e-mail also mentioned specific DOE regulations that have record keeping requirements. DOE contractors are required to develop and implement a written worker protection program to meet the requirements in the contractor requirements document for 10 CFR 851. Specifically, 851.26 is the primary section that outlines record keeping and reporting requirements. Contractors are also required to use Occupational Safety and Health Administration (OSHA) 300, *Log of Work-Related Injuries and Illnesses*, and OSHA 300-A, *Summary of Work-Related Injuries and Illnesses*, to log and summarize all occupational injuries and illnesses occurring to their employees that meet the criteria for OSHA recordable cases. The criteria for OSHA recordable injury and illness cases are contained in 29 CFR 1904, subpart C.

With regard to your comment on “issue with the contractors not meeting the regulatory and contract requirements,” we suggest that you raise this issue with the Office of Worker Safety and Health Enforcement. This office is responsible for conducting enforcement investigations in response to conditions that represent a potential violation of the requirements specified in 10 CFR 851.

We are pleased with the open and positive working relationship we have with you and the Alliance of Nuclear Worker Advocacy Groups, and we would welcome any questions you may have related to DOE’s role under EEOICPA.

Thank you.

Patricia R. Worthington, PhD
Director
Office of Health and Safety (AU-10)
Office of Environment, Health, Safety and Security
U.S. Department of Energy
Washington, DC 20585