MEMORANDUM FOR DISTRIBUTION

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SUBJECT: Summary of Title 10, Code of Federal Regulations, Part 851, Worker
Safety and Health Program, Site Visits

The Atomic Energy Act of 1954 gave the Department of Energy (DOE) the authority to regulate the
safety and health of its contractor employees, which is carried out through the use of DOE
Directives, including DOE Order (O) 440.1, Worker Protection Management for DOE Federal and
amended the Atomic Energy Act by inserting section 234 C. Section 234 C states: “The Secretary
shall promulgate regulations for industrial and construction health and safety at Department of
Energy facilities...”. It also states that the Rule will “provide a level of protection for workers at
such facilities that is substantially equivalent to the level of protection currently provided to such
workers...”. As a result, the Department promulgated the title 10, Code of Federal Regulations,
part 851, Worker Safety and Health Program (10 CFR 851 or the Rule), based on DOE O 440.1, the
Department’s current worker safety and health requirements.

DOE has undertaken a number of activities to improve Worker Safety and Health, including safety
culture reviews, the development of improved work planning and control guidance, and meetings
with union leadership to obtain its perspective on the Department’s implementation of its Worker
Safety and Health policies. One of the concerns raised by the union leadership was a potential lack
of understanding of the Worker Safety and Health Program Rule requirements, especially that of
workers’ rights. Worker rights and responsibilities are addressed by a number of departmental
policies, including 48 CFR (Department of Energy Acquisition Regulations), 10 CFR 851, and various
“whistleblower” protection rules.

The Rule contains specific requirements detailing management responsibilities and worker rights
and responsibilities (§ 851.20). In order to better understand how the Department’s contractors
were implementing this rule, a series of site visits, focused on the Worker Safety and Health
Program, were conducted at the Savannah River Site, Richland Site Office, the Office of River
Protection, the Idaho Operations Office, Sandia National Laboratories, the Y-12 National Nuclear
Security Administration Production Office, and Brookhaven National Laboratory. These visits were
designed to obtain a better understanding of how the worker rights and responsibilities
requirements are being implemented and provide the Department and its contractors with a
greater awareness of the Rule’s requirements and the implementation resources available from
the Office of Environment, Health, Safety and Security.
In general, the interaction with the participants and the opportunity to learn more about their individual perspectives were both thoughtful and constructive. The essence of the informal discussions were to hear firsthand from workers their views on the Worker Safety and Health Program. The discussions painted a positive picture of a safe and healthy work environment that is mindful and respectful of workers, their rights, and responsibilities. While there are areas still needing attention, many of the workers noted that they felt safer working on a DOE site than in private industry because DOE placed such a strong emphasis on health and safety; and at one facility, workers said they felt that the positive safety culture was so much a part of their work that it carried over into their personal lives. The attached document provides a summary of the observations from these site visits, including best practices and areas needing management attention voiced by the participants.

Attachment
Title 10, Code of Federal Regulations, Part 851 Outreach and Awareness Site Visits

Background:

On February 9, 2006, the Department of Energy (DOE or the Department) published title 10, Code of Federal Regulations (CFR), part 851, Worker Safety and Health Program (10 CFR 851 or the Rule), to codify its regulatory framework for an effective contractor worker safety and health program. The Rule, coupled with the Department’s Integrated Safety Management System (ISMS), has served as the overarching management framework for the safe planning and execution of DOE’s diverse missions.

A key component of the Rule is the requirement for a written Worker Safety and Health Program (WSHP), which describes how contractors implement the requirements of the Rule. Two sets of requirements of particular importance to workers are the management responsibilities and worker rights and responsibilities. The Office of Environment, Health, Safety and Security (AU) has received a number of questions relating to the effectiveness of these requirements and questions regarding whether or not management and workers understood their “851 rights and responsibilities.”

Recently, the Department has undertaken a number of activities to improve Worker Safety and Health, including safety culture reviews, and the development of work planning and control guidance. Included in these activities have been a number of WSHP Outreach and Awareness Site Visits.

These WSHP Outreach and Awareness site visits were designed to provide the sites with a clear understanding of the Rule’s requirements, recognition and acceptance of worker rights and responsibilities, and information on how to implement the Rule in a consistent and effective manner. In addition, they provided AU an opportunity to better understand any issues or difficulties in the implementation of the WSHP Rule. The visits were undertaken by a Headquarters (HQ) team, which included senior managers and staff composed of multidisciplinary subject matter experts (SME) from AU, the Office of Enterprise Assessments (EA), and labor representatives from the Hazardous Materials Management and Emergency Response (HAMMER) facility. The assist visits focused on policy clarification, subject matter technical assistance, and sharing of lessons learned and experiences and were structured to allow the HQ team the opportunity to listen to workers, management, and local safety and health SMEs.
This report represents a summary of visits to the Savannah River Site, Richland Site Office, the Office of River Protection, the Idaho Operations Office, Sandia National Laboratory, the Y-12 National Nuclear Security Administration (NNSA) Production Office, and Brookhaven National Laboratory.

The primary format of the visits consisted of holding small group discussions with individuals working under the same WSHP to ensure all workers and managers were given an opportunity to discuss their WSHP. Sessions were also held with a diverse cross section of Federal and contractor management, workers, union leadership and representatives, safety and health staff, and training and contracting SMEs.

All of the meetings were well attended and provided senior corporate safety and health experts with the opportunity to interact directly with the participants. These interactions included: (1) providing an overview of key elements of the WSHPs required by the Rule; (2) detailed discussions on the roles, responsibilities, and rights afforded to management and workers to ensure their job-related safety and health; and (3) listening firsthand to candid comments provided by participants. These sessions also provided a unique opportunity for unfiltered dialogue among the participants to share personal experiences and perspectives related to implementation of their worker safety and health programs at the site and to raise any questions or issues of concern.

General Observations:

The team found the interaction with the participants and the opportunity to learn more about their individual perspectives was both thoughtful and constructive. The purpose of the informal discussions was to hear firsthand from the worker their views on the WSHP. The results of these discussions painted a positive picture of a safe and healthy work environment that is mindful and respectful of workers, their rights, and responsibilities. They also identified some areas needing attention, both at their sites, as well as at Headquarters (see summary below). Many of the workers noted that they felt safer working on a DOE site than in private industry because DOE placed such a large emphasis on health and safety; at one facility, workers said they felt that the positive safety culture was so much a part of their work that it carried over into their personal lives.

One finding that seemed to address the question of workers and management understanding their “851 rights and responsibilities” was that many workers were not familiar with the term “851” (i.e., 10 CFR 851), which is the Code of Federal Regulations citation for the Department’s WSHP Rule. They did, however, overwhelmingly understand their rights and responsibilities and their worker safety and health programs even if they were not associated with the term “851.” This is not unexpected and would be equivalent to asking workers in private industry if they knew the requirements in 29 CFR 1910 or 1926, versus the Occupational Safety and Health Administration (OSHA) safety and health requirements.

At the conclusion of each of the site visits, the DOE and contractor officials were sent a letter providing a summary of the activities, which included a recognition of their best practices and
areas needing management attention voiced by the participants during the visit. A summary of noted observations, best practices, and areas needing attention are provided below.

Summary Statement

Noted Observations:

- "Suspend and Stop Work":
  - Strongly encourages workers and managers at all levels to suspend or stop work any time they identify a hazard or potential hazard that has not been resolved or have any questions about the safety of an activity or condition. Personnel provided many examples of having suspended or stopped work, the workforce involvement in the resolution of the issues, and the positive recognition they received for taking that action regardless of any immediate impacts on the schedule or production targets.

- Site-specific efforts and institutional processes are in place to ensure workers are aware of, and genuinely engaged in, safe execution of work. These included extensive use of pre- and post-job briefings, lessons-learned briefings, monthly safety and health briefings, training, and rewards to recognize safe behavior and practices.

- Constructive use of feedback approaches, such as behavior-based safety processes and workers’ ability to report concerns, have had a positive impact on updating/revising work procedures as needed. This practice is helpful in preserving and institutionalizing the site-specific operating experience, even for instances that do not meet the DOE threshold for reporting of events and incidents.

- WSHPs for the various contractors are integrated with the ISMS, which serves as the DOE framework for safe performance of work.

- Many workers felt that safety was so much a part of their work that it carried over into their personal lives.

- Excellent training provided by the HAMMER facility gives workers the needed knowledge and skills to perform their work safely.

- Prime contractor accepts responsibility for ensuring that subcontractors perform work consistent with the Prime contractor’s WSHP. Prime contractors work with subcontractors to be sure the subcontractors understand safety and health requirements and require visiting workers to follow its safety and health program. Prime contractors expend considerable effort in orienting, monitoring, and mentoring subcontractors and visitors, many of whom normally work in environments (outside of DOE) having less rigorous safety programs.

- Strong commitment to implementing engineered safety, which requires that a safety case be prepared for all activities, to ensure that a questioning attitude and critical thinking are applied to the hazards of all work activities. Key features of engineered safety initiative are: using critical thinking and not assuming low risks without careful analysis; emphasizing failure modes
analyses; engaging workers, SMEs, and management in a collaborative process with free 
exchange of information and ideas; and giving positive recognition to those who challenge 
poorly supported assumptions. The process also requires managers to engage the workforce 
and spend time at the activity-level work locations.

Site-Specific Best Practices:

- "Time Out" practices currently in place can be implemented by anyone who sees a safety and 
health issue or concern that needs to be addressed. Work can resume only when everyone on 
the crew agrees that it is safe to proceed. This is a precursor to exercising the right to "Stop 
Work." What was impressive about this practice was the ease with which workers described 
the process and there was no indication of pressure to discourage its use by management or 
coworkers. The "catch of the month" practice used to engage workers in identifying hazardous 
conditions was also an impressive practice.

- The concept of "see something-say something," which is recognized by workers as a non-
punitive policy, helps everyone maintain awareness and work safely.

- Widespread use of employee safety teams that are available and easily accessible to workers. 
This availability seems to be a shared strength among all the contractors at the site. The 
requirement for completion of the new General Employee Training (GET) and the tracking of 
that training was viewed as a positive step in assuring everyone had a basic understanding of 
WSHPs.

- Engagement and involvement of workers in meetings and other forums held between the 
safety representatives and management provided workers with a greater understanding of the 
role safety and health plays in their work.

- Hazard Analysis Work Instruction (HAWI) process used by the construction workers was 
considered to be a best practice. Construction workers felt that this process concisely 
captured the information collected in the automated job hazard analysis (JHA) approach 
without a lot of ancillary information that may, or may not, directly apply to their specific 
activities. HAWI has communication benefits, such as the allowance of greater worker input 
into the work procedures than the use of the automated system, which some workers felt was 
a weakness. In addition, the "construction handbook" was praised by the workers. Two other 
notable achievements included: (1) they have worked approximately 13 years without a 
recordable injury due to good supervision and work practices; and (2) when the guards were 
involved with pre-job briefings, along with workers, it allowed them to better understand the 
workers' jobs and hazards, as well as their own.

Practices Needing Management Attention at a Single Site or at Multiple Sites:

- There should be a greater focus on unique hazards, which are specific to functions and 
assignments, and there is a need to more fully explain the implications of the monitoring 
results. For example, what does the value actually represent and what is the range for normal 
exposures expected to be seen in similar situations?
• Provide mentoring, coaching, and monitoring of lower-tiered subcontractors and vendors that may not have the necessary resources to effectively fully comply with DOE WSHPs.

• While workers are overwhelmingly aware of their rights, there are still potential pockets of skepticism among some workers of supervisors' support of, or willingness to accept, a "Stop Work" or to encourage reporting of injury/hazard incidents. Visible Federal and contractor management engagement and commitment reassures the workforce of its right and responsibility to raise safety issues.

• There are still pockets of workers who fear retaliation in their organizations, which prevents workers from using "Stop Work" procedures. The team found that instead, workers employ safety representatives or more senior workers on their behalf. In some cases, there were questions regarding the circumstances that would trigger a stop or pause of work, the process used to assess the work conditions and notification to resume work once the issue triggering the stop or pause is addressed.

• Inconsistent application of safety and health standards and requirements across the multiple contractor organizations was discussed by some workers; for example, in the area of employee involvement and training this created a safety concern and friction between contractor and subcontractor employees.

• Some employees felt that augmenting computer-based training with additional resources, coupled with other approaches, including instructor-based sessions, would make the training easier to understand and more productive.

• Site-wide procedures were identified as a positive step in addressing inconsistencies in WSHP implementation; however, there were some individuals who felt there was some resistance to using these procedures, which may lead to inconsistencies in implementation of site-wide procedures, as well as implementation of other WSHP elements.

• In general, there was a willingness expressed to reporting injuries or hazard incidents. However, among some contractors, there was reluctance by some workers to report these due to fear of reprisal and perceptions that these are a detriment to meeting contract incentives.

• Some employees expressed a desire for a more visible management commitment to the WSHP to address a lack of confidence in implementation of the employee concerns program. They also requested more frequent communications between workers and management and more timely and inclusive communication of investigations/assessments of post safety incidents, including a followup to implementation status of any corrective actions and more visible Federal oversight and monitoring of work execution by the Facility Representative.

• Some maintenance workers felt that there was a greater reliance on the use of personal protective equipment over engineering controls, which is counter to the hierarchy of controls.

• Some workers had difficulty in understanding risk and suggested better methods for describing risk in addressing specific applications in non-science areas.
Actions for AU:

Some topics were brought to the attention of AU that will require actions at HQ by either AU staff or by working groups led by AU staff. Actions already taken by AU to address these concerns are noted in italicized text.

- Share with other sites the noteworthy practices and lessons learned from experience in Implementation of worker safety and health program, especially the Engineered Safety process.
  
  o Copies of the site visit letters are copied to all of the Program and Field Offices.

- Provide better guidance on the use of consensus standards required by 10 CFR 851. Specifically, when newer standards have been issued, making it clear which version a contractor may use to be in compliance with the requirements.
  
  o AU held two complex-wide televideos, working with the Offices of the General Counsel and Enforcement to finalize a technical clarification on the use of consensus standards.

  o A number of technical clarifications have been developed addressing the use of consensus standards. These technical clarifications are made available, complex-wide, on the AU Website.

- Coordinate with DOE Headquarters Program and Field Offices, including procurement and environment, safety and health SMEs, to refine procurement strategies to improve implementation of DOE worker safety and health requirements by DOE contractors, including small businesses. Areas for improvement include: retention of medical records, application of updated consensus standards, and tools, such as templates for WSHPs for small businesses or unique missions.
  
  o A working group has been formed and a number of meetings have been held to discuss its various approaches to addressing small contractors. A guidance paper is being prepared and will be shared with the complex and posted on the 851 Web site.

- Look into the potential for “enforcement-free zone,” where the work is done by the Corps of Engineers (COE), who are not covered by 10 CFR 851, and OSHA does not come onsite to oversee the COE health and safety.

- Provide assistance to allow work planners to better understand worker safety and health requirements and how all of the safety programs integrate with one another.
  
  o AU has been providing OSHA 10- and 30-hour training for Federal workers at any site requesting this training. This training may be useful for all work planners who are not familiar with the safety and health requirements, which must be addressed in the WSHP. AU is working with the National Training Center and HAMMER to develop initial orientation training that addresses worker 851 rights and responsibilities.