

Occupational Safety and Health Administration

Notice of Memorandum of Understanding Between the Occupational Safety and Health Administration and the Office of Environment, Safety and Health Regarding Worker Safety and Health at Facilities Leased by the United States Enrichment Corporation

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Memorandum of Understanding (MOU) between the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and the U.S. Department of Energy (DOE) Office of Environment, Safety and Health. The MOU delineates the areas of responsibility of each agency at the gaseous diffusion plants owned by DOE and leased by the United States Enrichment Corporation (USEC); describes generally the efforts of the agencies to assure worker protection at these plants; and provides procedures for coordination of activities between DOE and OSHA.

EFFECTIVE DATE: December 21, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Ave., N.W., Washington, D.C. 20210. Telephone: (202) 219-8615.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992, (the Energy Policy Act, 42 U.S.C. Section 2297 *et. seq.*), created the USEC, a government corporation which administers uranium enrichment facilities leased from DOE. The Energy Policy Act also required the Nuclear Regulatory Commission (NRC) to establish standards for the regulation of the gaseous diffusion plants leased by the USEC. The NRC final rule set forth requirements for plant certification, and announced assumption of NRC regulatory authority over diffusion plants in "late 1995." See 59 FR 48944-48976.

Until such time as the NRC assumes regulatory jurisdiction, DOE will exercise nuclear safety and safeguards and security oversight authority. The regulatory framework under which DOE exercises its authority is contained in a Regulatory Oversight Agreement incorporated in the lease agreement between DOE and USEC. Specific

matters related to the process by which NRC will assume, and DOE will relinquish, responsibility for regulatory oversight under the Energy Policy Act are set forth in a Joint Statement of Understanding between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plant, 59 FR 4729 (February 1, 1994).

Both DOE and OSHA have jurisdiction over safety and health at the portions of the gaseous diffusion plants leased by the USEC. A coordinated inter-agency effort, as outlined in the MOU (Appendix) will minimize potential gaps in the protection of the workers and avoid possible conflicting requirements.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210.

Signed in Washington, D.C. this 19th day of January 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

Appendix

Memorandum of Understanding Between the U.S. Department of Labor, Occupational Safety and Health Administration, and U.S. Department of Energy, Office of Environments, Safety and Health

I. Purpose and Background

A. The purpose of this Memorandum of Understanding between the United States Department of Energy's (DOE) Office of Environment, Safety and Health and the United States Department of Labor's Occupational Safety and Health Administration (OSHA) is to delineate the areas of responsibility of each agency at the gaseous diffusion plants owned by DOE and leased by the United States Enrichment Corporation (USEC); to describe generally the efforts of the agencies to assure worker protection at these; and, to provide procedures for coordination of activities between DOE and OSHA.

B. Both DOE and OSHA have jurisdiction over radiological safety and health at the portions of the gaseous diffusion plants leased by the USEC. A coordinated inter-agency effort can minimize potential gaps in the protection of workers and, at the same time, avoid possible conflicting requirements.

II. Hazards Associated With Gaseous Diffusion Plants

Four basic categories of hazards are associated with the gaseous diffusion plants:

A. Industrial safety hazards due to the plant's physical condition or its operations;

B. Health hazards due to chemical and toxicological exposures associated with non-radioactive materials;

C. Health hazards due to potential exposure associated with radioactive materials; and,

D. Radiation hazards to the general public and the environment.

OSHA will regulate the hazards listed in paragraphs II. A; B; and C. DOE will regulate the hazards listed in paragraphs II. C, and D.

III. DOE Responsibilities

The Energy Policy Act of 1992, (the Energy Policy Act, 42 U.S.C. Section 2297 *et. seq.*), created the USEC, a government corporation, for purposes including leasing DOE's uranium enrichment facilities to market and sell enriched uranium and uranium enrichment and related services to the Department and domestic and foreign interests. The Energy Policy Act also requires the Nuclear Regulatory Commission (NRC) to establish standards for the regulation of the gaseous diffusion plants leased by the USEC by October 24, 1994, in order to protect the public health and safety from radiological hazards and to provide for the common defense and security. After these standards are promulgated, the USEC is required to apply at least annually for a certificate of compliance with these standards. Until such time as the NRC assumes regulatory jurisdiction at the gaseous diffusion plants, DOE will exercise nuclear safety and safeguards and security oversight authority to protect the public at the leased portions of the gaseous diffusion plant located in Paducah, Kentucky, and Piketon, Ohio. The regulatory framework for which DOE exercises its authority is contained in the Regulatory Oversight Agreement, Exhibit D to the Lease Agreement between DOE and USEC dated July 1, 1993. Specific matters related to the process by which NRC will assume, and DOE will relinquish, responsibility for regulatory oversight under the Energy Policy Act are set forth in a Joint Statement of Understanding between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plant, 59 FR 4729 (February 1, 1994).

DOE's responsibility is to promote and protect the radiological health and safety of the public and workers and to provide for the common defense and security at the leased portion of the DOE-owned gaseous diffusion plants. These responsibilities are performed pursuant to the guidelines established in the Safety Basis and Framework for DOE Oversight of the Gaseous Diffusion Plants (Appendix A to the Regulatory Oversight Agreement); and the conducting of inspections, reviews, investigations, and enforcement actions, in accordance with the Regulatory Oversight Agreement.

IV. OSHA Responsibilities

OSHA is responsible for administering the requirements of the Occupational Safety and Health Act of 1970 (the OSH Act, 29 U.S.C. 651 *et seq.*). Under the OSH Act, every employer has a general duty to furnish each employee a place of employment which is free from recognized hazards which may cause death or serious physical harm; employers are also required to comply with specific OSHA standards, regulations, and other requirements.

The Energy Policy Act of 1992 specifically makes all OSHA requirements, including all injunctive and administrative enforcement remedies, applicable to USEC facilities notwithstanding the limitations otherwise imposed on OSHA enforcement by section 4(b)(1) of the Occupational Safety and Health Act. Additionally, the Energy Policy Act specifically waives any immunity which might otherwise be applicable to USEC, 42 U.S.C. Section 2297b-11(c) (1992). Therefore, OSHA requirements applicable to working conditions within the gaseous diffusion facilities administered by USEC or its subcontractors are not subject to preemption by regulations issued by other federal agencies.

Accordingly, OSHA will enforce all applicable standards, rules and requirements including, but not limited to, the standards on ionizing radiation hazards, 29 CFR 1910.96; control of hazardous energy sources, 29 CFR 1910.147; hazardous waste operations and emergency response, 29 CFR 1910.120; hazard communication, 29 CFR 1910.1200; and, the general duty clause. It is the intention of OSHA and DOE to coordinate their regulatory and oversight activities in a manner which avoids, to the extent possible, the imposition of inconsistent obligations on USEC.

V. Coordination Procedures

In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

A. Referrals

1. Although DOE does not conduct inspections of industrial safety in the course of inspections of nuclear safety and safeguards and security, DOE Regulatory Oversight personnel may identify occupational safety or health concerns within the area of OSHA responsibility. In such instances:

a. Employee complaints received by DOE regarding issues that are within OSHA's purview will be immediately referred to OSHA, and the identity of the complaining employee shall not be disclosed to any employer by either OSHA or DOE.

b. All other safety and health concerns within OSHA's purview identified by DOE will be referred to USEC management in writing for expedient correction. DOE will provide the same information on these concerns to local union bargaining representatives of the USEC contractor employees.

c. Serious hazards within OSHA's purview will be reported to OSHA if uncorrected. DOE will periodically advise OSHA on the number and nature of serious hazards referred to USEC for correction.

2. OSHA Regional Offices will inform the DOE Regulatory Oversight Manager of matters which are in DOE's purview when such matters are identified during OSHA safety and health inspections or through complaints (identification of the complaining employee shall not be disclosed by DOE or OSHA). OSHA will provide the same information on these concerns to local union bargaining representatives of the USEC contractor employees.

a. The following are examples of reportable concerns:

(1) Insufficient security control affecting nuclear or radiological health and safety.

(2) Improper posting of radiation areas.

(3) Hazardous conditions relating to radiological or nuclear safety.

B. Inspections

1. DOE and OSHA will not normally conduct joint inspections at the gaseous diffusion plants. However, under certain conditions, such as investigations or inspections following accidents or resulting from reported activities as discussed in paragraph V. A., it may be mutually agreed on a case-by-case basis that joint investigations are appropriate.

2. The processing of uranium materials at the gaseous diffusion plants may present overlapping chemical and nuclear operation safety hazards which can best be evaluated by joint DOE-OSHA assessments.

C. Coordination

1. DOE and OSHA will, to the fullest extent possible, cooperate and coordinate at all organizational levels to develop and carry out information exchange, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the workforce and the general public.

2. Resolution of policy issues concerning agency jurisdiction and operations will be coordinated by appropriate DOE and OSHA staff with input from the Office of the Solicitor. DOE and OSHA will designate points of contact for carrying out interface activities.

3. The whistleblower protection provisions of the Energy Reorganization Act, 42 U.S.C. Section 5851, as well as those in section 11(c) of the OSH Act, 29 U.S.C. Section 660(c), are applicable to employees of USEC and contractors at USEC administered facilities.

VI. Effective Date, Amendment, and Termination

This agreement shall become effective when signed by both parties. It may be modified or amended by written agreement between the parties. Such amendments shall become part of, and shall be attached to, this agreement. This agreement shall remain effective until terminated by either party upon 30 days written notice to the other, or until completion of the transition from DOE Regulatory Oversight to NRC enforcement of radiological safety and health matters at USEC facilities. The parties agree that if the transition process is not completed by October 1, 1995, the parties will review this MOU and make a decision on whether to renew, revise, reissue, or terminate the MOU.

Dated: December 21, 1994.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

Dated: December 21, 1994.

Tara O'Toole, M.D., M.P.H.

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95-2341 Filed 1-30-95; 8:45 am]

BILLING CODE 4610-26-M