

(1) Unduly relax or eliminate important nuclear safety requirements in Orders.

(2) Relegate good nuclear safety practices extant in existing Orders to optional status.

(3) Forego or delay current efforts to bring safety practices into compliance with mutually agreed implementation plans that respond to recommendations of the Board.

In accepting Recommendation 91-1, your predecessor advised that rulemaking would be a time-consuming process, and he committed to expedited issuance and implementation of updated requirements in DOE Orders while rules are developed. More recently, in your response of October 21, 1994 to the Board's May 6, 1994 inquiry to the Department, you also acknowledged the need for interim development, revision, and compliance with requirements in DOE Orders while rules are being promulgated.

In fact, your response reflected more completely the process that has been developed in discussions with the Board and its staff. It stated that:

(1) The Department is committed to a requirements-based safety management program.

(2) Environment, safety and health requirements are identified in rules and Orders.

(3) Orders are the prevailing means by which the Department identifies management objectives that are requirements for its personnel, and when incorporated into contracts, requirements for DOE contractors.

(4) Nuclear safety Orders are being phased into rules. Rules are the documents by which the DOE establishes binding requirements of general applicability and are adopted pursuant to the Administrative Procedures Act.

(5) Contractors are expected to comply with a rule or Order when it becomes effective.¹

(6) Standards/Requirements Identification Documents (S/RIDs) are developed as compilations of site and facility-specific requirements contained in applicable legislation, rules, Orders, technical standards and other directives necessary to operate facilities or conduct DOE activities with adequate protection of workers and the general public.

This summary clearly shows that DOE intends that the definition of what constitutes adequacy in the way of

protection of workers and the public extends beyond the requirements of rules. In that, the Board definitely concurs. It is the compilation of requirements as envisaged for RIDs that represents the more comprehensive base upon which sites and facilities are to be managed from the environment, health and safety viewpoint. This has also been the thrust of many of the Board recommendations dealing with Order compliance.

However, the action toward development of S/RIDs has been slow. Requirements in Orders have been and are still the prevailing DOE means for defining safety requirements for contractors. Requirements in Orders are made enforceable by incorporating Orders into contracts. Therefore, the Board has reviewed a number of existing M & O contracts relative to provisions for Order compliance. The Board has also examined the health and safety management specifications included in several recently proposed contract actions (for example, at Rocky Flats and Hanford/Solid Waste Management). Performance per conditions specified either in existing contracts or those more recently examined will not in our view assure delivery of the safety management programs we believe that the Board and the Department expect.

Though the Board has been reassured by your letter of October 21 and by other means that requirements in DOE Orders are to remain operative until replaced by rules, there appears to be contrary guidance being issued to the field. For example, a May 27, 1994 memorandum from the Assistant Secretary for Defense Programs provides guidance that in effect encourages a premature shift in resources from Order compliance to rule compliance. For rules that will have progressed far enough in the promulgation process that only a few months are left for a show of compliance, such action may be appropriate as regards establishing priorities in assigning resources. However, such action should not be construed as countenancing relaxation of necessary requirements of the existing Order. Moreover, for proposed rules not nearly so far along in the rule-making process, impending developments should not be taken as cause for a slowdown on compliance efforts or the upgrading of applicable requirements now in Orders and contracts.

Along similar lines, the Board has noted a November 30, 1994 advisory from the Albuquerque field office to DOE headquarters (M.S. Dienes to J. Fitzgerald) that a hold has been placed

on the radiation protection functional appraisal process until DOE review and approval of the implementation plans for the rule have been completed. There is no rational justification for such deferral. Such action suggests that field personnel may have been led to believe that there will be marked differences between those radiation protection programs under the rule and the requirements under existing Orders incorporated in contracts.

The provisions of the contracts and the above-mentioned advisories by DOE line management indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M & O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department.

Given the situation as described above, the Board believes that further DOE actions are needed to ensure there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated. Toward that end, the Board recommends that DOE:

(1) Widely disseminate the information provided to the Board in response to our May 6, 1994 letter on DOE's Safety Management Program, and take steps to ensure that key technical and contracts personnel are well schooled in this topic.

(2) Promptly issue appropriate directives and procedures to DOE Headquarters, Field Offices and O&M contractors which:

(a) Embrace the basic principle that work already commenced or planned to develop and implement requirements in existing or revised Orders or S/RIDs should continue while rulemaking is underway;

(b) Explain in detail the relationship between safety requirements contained in Orders in O&M contracts and those contained in new rules, and the process by which a rule may "supersede" parts, or the entirety, of a safety Order;

(c) Explain that compliance with a requirement whether in a rule, Order or other directive is not accomplished by submittal of an adequate implementation plan but requires completion of action proposed by that plan;

(d) Provide guidance to contractors and DOE program offices on how to coordinate implementation plans for multiple requirements such as those in

¹ Note: Rules actually require an implementation plan and then allow a period for achieving compliance. A similar phase-in period is permissible for requirements in Orders incorporated into contracts.