

Facility: Regulatory and Reporting Technical Subgroup

Best Practice Title: Preparation and Conduct of an Enforcement Investigation

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Brief Description of Best Practice: The best practice is to share lessons learned from the EFCOG Safety Working Group community that may help DOE Contractors through the logistics of preparing for and participating in an enforcement investigation.

Why the best practice was used: Enforcement Coordinators within the Contractor Community have different levels of experience in preparing for and participating in an enforcement investigation.

What are the benefits of the best practice: The best practice captures the lessons learned, which an Enforcement Coordinator can use as a guide through each phase of an enforcement investigation.

What problems/issues were associated with the best practice: Enforcement Coordinators within the Contractor Community have different levels of experience.

How the success of the Best Practice was measured: This guidance document was vetted through the EFCOG Community and the DOE Office of Enforcement. Much of the information provided in this document was discussed during EFCOG Working Group meetings.

Description of process experience using the Best Practice: The guidance provided in the document reflects best business practices used through the DOE complex.

EFCOG Guidance Document

Preparation and Conduct of an Enforcement Investigation

Prepared by:

**EFCOG Safety Working Group
Regulatory and Enforcement Subgroup**

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1. INTRODUCTION

This best practice is intended to be used in conjunction with the Safety and Security Enforcement Process Overview and the Safety and Security Enforcement Handbook in preparation for an enforcement investigation.

2. PURPOSE

The purpose of this document is to share lessons learned from the EFCOG Safety Working Group community that may help DOE Contractors through the logistics of preparing for and participating in an enforcement investigation.

This document is written from the perspective of a Contractor Enforcement Coordinator fulfilling the desired roles and responsibilities as outlined in the Department of Energy (DOE) Safety and Security Enforcement Coordinator Handbook. Modification to the approach and implementation of lessons learned shared in this document are at the discretion of the Contractor's Management.

3. ENFORCEMENT INVESTIGATION

The Office of Enforcement uses the investigation process when a significant safety or classified information security event occurs, or a condition is identified. The decision to investigate is based on an evaluation of the safety and/or security significance associated with a particular noncompliance.

3.1 Notice of Intent to Investigate

The Contractor's Enforcement Coordinator receives a courtesy phone call from their assigned Enforcement Specialist informing the Contractor's Enforcement Coordinator that the Director of the Office of Enforcement will be sending a Notice of Intent to Investigate in a specific area to their President/Laboratory Director. A copy of this letter is sent to the DOE Head of Field Element and the DOE Enforcement Coordinator.

The Office of Enforcement coordinates the schedule for the investigation, agenda, and the list of individuals to be interviewed with the cognizant DOE and Contractor Enforcement Coordinators. Below are items to be considered upon completion of the notification phone call with the Enforcement Specialist:

- Notify the President/Laboratory Director, Division/Organization Management responsible for the event or significant condition of the phone call and the expected letter.
- Discuss with the President/Laboratory Director whether to submit a request for a Consent Order/Settlement Agreement based on the Settlement Criteria established in the DOE Safety and Security Enforcement Process Overview. Consent Order/Settlement Agreement

requests should include: (1) justification as to why a Consent Order or Settlement Agreement is appropriate; (2) the investigation report; and (3) the causal analysis.

- Due to the diverse differences in each investigation, President/Laboratory Directors and their Senior Management may choose, at any time during an investigation, to request a Consent Order/Settlement Agreement. The Office of Enforcement may choose to complete their investigation before entering into a Consent Order/Settlement Agreement.
- Notify the business/financial management organization point-of-contact of the need for a charge number to track all unallowable costs incurred that are directly attributable to supporting the DOE's investigation. The tracking of unallowable costs needs to begin after receipt of the Notice of Intent to Investigate letter so that they segregate them from other potentially allowable costs.
- Ensure accident scenes are being preserved for the Enforcement Investigation team if requested.
 - Request the management responsible for the area of the investigation to establish a point-of-contact within their organization who can help with the Information Request (data call) that will be coming.
- Ensure the preservation of evidence for security investigation.
- Start collecting the following information in an electronic format, which will likely be part of the Information Request:
 - Work instructions (procedures, work order, drawings, radiological work permit, test plans) associated with the job evolution that was occurring at the time of the event.
 - Any compensatory measures or approved deviations/exceptions to requirements that may have been put into place.
 - Implementing policies (Documented Safety Analysis, Technical Safety Requirements, Quality Assurance Program, Worker Safety & Health Program, Classified Matter Protection and Control Program, Incident of Security Concern Program, cyber Security Program, Self-Assessment Reports, training content and records, procedures, organization charts).
 - Extent of Condition, Cause Analysis Report and Corrective Action Plan.

- Listing of DOE directives in the contract at the time of the event.

Upon receipt of the Notice of Intent to Investigate letter from the Office of the Enforcement, the Enforcement Coordinator should consider the following:

- Communicate to management and supporting personnel the charge number and expectations to segregate costs associated with the investigation to meet the requirements under the Major Fraud Act (MFA), as amended 41 U.S.C. § 4310.
- Monitor unallowable charge number to ensure that those assigned duties to respond to Enforcement are charging their time appropriately to the unallowable account. If staff is assisting the Enforcement Coordinator, but there is no time billed to the unallowable account, corrective action is needed to alter the time cards sooner rather than later.
- Monitor unallowable charge numbers to ensure people not associated with the enforcement are not charging.

3.2 Information Request

The Office of Enforcement's information request is aimed at obtaining documents that aid in understanding the facts and circumstances of the noncompliant condition(s). The information request is transmitted from the Enforcement Specialist to the Contractor's Enforcement Coordinator. Information requests are time sensitive based on the email correspondence with the Enforcement Specialist and/or the letter of Intent to Investigate. The information request is typically completed and provided to the Enforcement Specialists within two to three weeks.

Upon receipt of the information request, the Enforcement Coordinator should consider the following:

- Communicate to management and supporting personnel the charge number and expectations to segregate costs associated with the investigation to meet the requirements under the Major Fraud Act (MFA), as amended 41 U.S.C. § 4310.
- Provide the information request to both the established point-of-contact and the responsible manager.
- Discuss with the responsible manager if this information request is appropriate for the event or significant condition and can the materials be provided within the requested time period. Do not be afraid to provide feedback to the requesting Enforcement Specialist such as the following:
 - The organization does not understand an item being requested.

- Additional time is needed due to the volume of information requested.
- The information being requested is of a broad subject and may require extensive retrieval by the Contractor. Seek to understand the request, which may be able to be streamlined to a more manageable request. Communicate to the Enforcement Specialist if this will cause excessive resourcing.
- Records that are being stored at an off-site location, which may impact timely retrieval.
- Enforcement Specialist requested document XYZ, but he really needs a different document based on management’s knowledge of the event.
- A document is classified.
- Establish a file format to provide information to the requesting Enforcement Specialist.
- Let the organization being investigated pull and provide the requested information to the established point-of-contact.
- Enforcement Coordinator performs the validation of the information being provided for the list of requested information to ensure all the requested information has been provided to the Enforcement Specialist.
 - Do not alter documents; however, ensure documents being provided had signatures and dates at the time of the event. A draft document may have inadvertently been pulled instead of a final document with signatures.
- Ensure early engagement with the Contractor’s Classification Office to ensure proper handling of classified information.
- Notify management of the transmission of the requested information.
- Maintain a file (electronic or paper) of all documents provided for the information request.
- Provide requested information in batches, if possible, rather than waiting until all information is gathered before transmitting to the Office of Enforcement.
- Anticipate follow up information requests.

- Monitor unallowable charge number to ensure that those assigned duties to respond to Enforcement are charging their time appropriately to the unallowable account.

3.3 Investigation Schedule and Interview List

The Office of Enforcement Investigation Schedule is usually negotiated based on availability of Contractor personnel, DOE Field Office, DOE Program Office and availability of Office of Enforcement personnel. The Enforcement Specialist will provide a draft Investigation Agenda indicating a targeted time period for the on-site investigation and the individuals/positions they would like to interview.

The Enforcement Coordinator provides a redline mark-up of the Investigation Agenda to the requesting Enforcement Specialist. Below are items to keep in mind while scheduling and establishing the interview list for the on-site investigation:

- Work the investigation scheduling and interview list with your local DOE Field Office Enforcement Coordinator.
- Determine accommodation needs for the investigation team while they are on-site:
 - Conference room for entry and exit meeting.
 - Conference room or work area where interviews can be conducted without interruption.
- Determine if a facility has to be in a specific mode of operations for the investigation.
- Review the proposed interview list with management to ensure the correct individuals are listed for interviews in the subject areas and make recommendations of individuals who may not be listed, but can provide information for the investigation.
- Involve Union Representatives if represented employees are involved.
- Inform the Enforcement Specialist if an individual on the interview list becomes unavailable (for example significant medical issues or family emergency).
- Review the calendar of key individuals:
 - Availability of individuals.
 - Other activities.

- Determine if a Holiday and/or weather could affect the schedule.
- Potential government shutdown.
 - Monitor unallowable charge number to ensure that those assigned duties to respond to Enforcement are charging their time appropriately to the unallowable account.

3.4 Preparation for Investigation

The Contractor Enforcement Coordinator responsibilities are to coordinate the logistics for the on-site investigation with the cognizant DOE Enforcement Coordinator and Contractor personnel. Below is a list of items to consider in the preparation for the on-site investigation.

NOTE: *Have a conversation with the Office of Enforcement fairly early in the investigation planning process to ensure consistent expectations of Personal Representative and union representation in attendance of interviews as the interview schedule is being developed.*

3.4.1 Investigation Team

- Training Needs – Site and/or facility training required before Investigation Team arrives on site:
 - Computer based training
 - Required reads
- Dosimeter needed.
- Medical for PPE usage.
- Clothing requirements (for example, leather boots above the ankles, safety glasses, cotton clothing, hardhat, etc.).

3.4.2 Logistics

- Address Laboratory specific badging requirements.
- Designated parking.
- An appropriate work location for the length of time the Investigation Team is on site, to include security considerations (e.g. within a Limited Area if necessary).
- Communication needs.

- Access to accommodation for meals.
- Arrangements for the review of requested classified documents that could not be provided until the investigation team arrives on site.
- Arrangement for facility and work area inspections where the event occurred.
- Arrangement for access to accident scene that may be being preserved for Investigation Team.
- Monitor unallowable charge number.
- Conference room(s) large enough for Entry and Exit Meetings (DOE Field Office, Investigation Team, Contractor Senior Manager Team and Counsel).
- Arrangement for Feds only meetings if needed.
- Arrange for a location that is close to the area where employees are being interviewed so the Enforcement Coordinator can provide support to the employees and the Investigation Team.
- Request Public Affairs assistance if the event has received, or is likely to receive, media attention.
- Provide maps if necessary.

3.4.3 Contractor Personnel

- Calendar invitations for Contractor personnel scheduled for interviews.
- Communicate to Management and supporting personnel the charge number and expectations to segregate costs associated with the investigation to meet the requirements under the Major Fraud Act (MFA), as amended 41 U.S.C. § 4310.
- Discuss with Senior Management who should be attending the Entry and Exit Meeting.
- Discuss with Senior Management whether a presentation will be developed for the Entry Meeting:
 - Developer and Presenter.
 - Keep it simple – why this is important to management.

- Dry run(s) if needed.
- Hold a meeting with Contractor personnel scheduled for interviews:
 - Tell them why the Office of Enforcement is coming to investigate.
 - Walk them through the investigative process and what to expect.
 - Inform them of their right to have a union representative with them during interview, if they are a represented employee.
 - Inform non-union interviewees they may have a Personal Representative with them during their interview.
 - Be honest and transparent in the answering of questions. DOE contractors may not retaliate against any employee because the employee has disclosed information, participated in activities, or refused to participate in activities. (10 CFR 820).
 - If you don't know it's ok. Tell them who does know.
 - Tell them what your role is as the point-of-contact and support them through the process.
 - Emphasize the importance of being on time for their interview.
- Ensure availability of the organization's point-of-contact for records in anticipation for additional requests.

3.5 Enforcement Investigation

The DOE and Contractor Enforcement Coordinators support the Office of Enforcement Investigation Team during their time on-site. There have been incidents where a Consent Order/Settlement Agreement was requested early on in the event.

3.6 Entry Meeting

The entry meeting consists of personnel from the DOE Field Office, Contractor's Senior Management and Responsible Manager, Investigation Team, Enforcement Coordinators, and Counsel. The Investigation Team opens the meeting to summarize the purpose of the visit and the onsite investigation process. The

Contractor is given the opportunity to present if they choose. The Investigation Team will likely hold a meeting with federal staff to obtain their input prior to the first meeting with contractor staff.

3.7 Investigation

The Investigation Team will begin their investigation following the entry meeting. The Contractor's Enforcement Coordinator ensure support is provided to the Investigation Team and Contractor employees. The DOE Field Element Enforcement Coordinator will likely sit in on these discussions. A representative of the DOE Program Office may sit in as well.

- Locate close to the work location to support Investigation Team
- Locate interviews where privacy of discussions can occur
- Ensure Interviewees are on time
- Keep track of any information requests and ensure the information is provided timely.
- Review onsite data requests regularly with the Investigation Team.
- Interface with the employee(s) while they are waiting to be interviewed.
- Ask the employee(s) if any documents were requested by the investigation team during their interview so you can provide copies to the team.
- Address any concerns that the employees bring up associated with the investigation.
- Help ensure that the expectations established by the Office of Enforcement regarding who can attend interview sessions with employees are met.
- Address any needs from the Investigation Team.
- Modify the Investigation Schedule per the request of the Investigation Team:
 - Attend daily out briefs with the Investigation Team if scheduled.
 - Monitor unallowable charge number to ensure that those assigned duties to respond to Enforcement are charging their time appropriately to the unallowable account.

3.8 Exit Meeting

An Exit Meeting is held with the Investigation Team, DOE Field Office, Contractor Senior Management and Responsible Manager, and Counsel. The Investigation Team will likely also hold a meeting with DOE federal staff after this meeting.

- Find out from your Senior Management who may attend the Exit Meeting.
- Watch for a creep in the number of individuals who want to attend the exit meeting so that the contractor personnel attending is appropriate to the circumstances.
- Suggest letting personnel involved in the event attend the Exit Meeting. It is a great opportunity for them to learn how the Regulator looks at events. It might help in the improvement in safety culture.
- Take notes on the information shared; you are more than likely see it in the investigation report.
- The conclusion of the Exit Meeting is another opportunity for Senior Management to determine if they would want to request a Consent Order/Settlement Agreement.
- Submit management's request for settlement to the Office of Enforcement following the Exit Meeting.

3.9 Investigation Report

The Enforcement Specialist will notify you when the Investigation Report is to be transmitted to the Contractor. Typically, the transmittal letter will state that an Enforcement Conference is recommended. This Investigation Report will be provided to the DOE Program Office and the DOE Head of Field Element for review and comment. A copy of the final report will be provided to the DOE Program Office and DOE Head of Field Element.

- Upon receipt of the Investigation Report, send it to your Senior Management, Responsible Managers, and subject matter experts if needed for factual accuracy.
- Provide feedback on the accuracy of facts in the investigation report.
- Don't try to re-write the report; however, suggest terminology changes or for clarification.
- Conduct the review within the specified time period.

- Correct inaccurate information that may have been provided through cause analysis.

4. ENFORCEMENT CONFERENCE

4.1 Schedule

Work with local DOE Field Office, Office of Enforcement, and DOE Program Office in the scheduling of the Enforcement Conference.

- Redline the draft Enforcement Conference agenda when received.
- Schedule the conference room long enough for the Feds only before and after meeting and Enforcement Conference.
- Arrange for a conference call line if individuals are calling in.
- Arrange for teleconferencing if requested.
- Determine with your Senior Management who will be participants at the table and who will be allowed in the meeting as non-participants.

4.2 Preparation

An Enforcement Conference is usually held between DOE and the Contractor to discuss the investigation. It gives the Contractor the opportunity to emphasize that they understand the significance of the noncompliance and that they are and have taken prompt action to prevent the likelihood of recurrence.

- Any necessary clarifications.
- Status on the completion of corrective actions.
- Completion on the sanitizing of computer systems, and or other appropriate methods.
- Recommend counsel to participate in the dry runs to provide feedback and review of any material being presented.
- Discuss with Senior Management strategy and who will be the participants at the table. Recommend that the Enforcement Coordinator participate as a member.
 - The Coordinator has been working the logistics and has guided management through the enforcement process, which the Enforcement Conference is a part.
 - Help with the strategy and tone.

- Discuss with Senior Management who may be observers at the Enforcement Conference
- Discuss with Senior Management whether to script your presentation or develop PowerPoint presentation.
 - Give management the opportunity to put down their thoughts and a placeholder when questions are asked during their presentation.
 - Management and Counsel have vetted the information for factual accuracy and appropriate tone.
 - There should be no surprises.
 - This is no time for winging it – for one thing, it could lead down a path that need not be discussed during the Enforcement Conference, and it could get you additional corrective actions.
 - If your management has requested a Consent Order/Settlement Agreement, this would be another opportunity to emphasize that request.
- Monitor unallowable charge number to ensure that those assigned duties to respond to Enforcement are charging their time appropriately to the unallowable account.

4.3 Pre-Conference DOE-Only Meeting

Work with the DOE Field Office Enforcement Coordinator on any accommodations that are needed.

4.4 Enforcement Conference

The Enforcement Conference is between DOE and the Contractor. Work with the DOE Field Office Enforcement Coordinator to ensure the meeting location will accommodate the amount of anticipated attendees. (NOTE: An Enforcement Conference may be held at DOE Headquarters)

- Senior management, Enforcement Coordinators, and those that have a presentation role should be at the table.
 - Counsel and others that have been granted permission to watch are seat along the wall.
 - Ensure observers understand that they are there to observe **only**, not to participate unless asked.

4.5 Post-Conference DOE-Only Meeting

Work with the DOE Field Office Enforcement Coordinator on any accommodations that are needed.

5. ENFORCEMENT OUTCOMES

The Enforcement Coordinator needs to be prepared for the enforcement outcome following the Enforcement Conference.

5.1 Preliminary Notice of Violation

- Enforcement Coordinator and management work with the Public Affairs Organization in preparation of receipt of Preliminary Notice of Violation (PNOV):
 - Prepare response to inquiries from the press release.
- Discuss with Senior Management the Preliminary Notice of Violation.
 - Obtain permission to request funds to pay civil penalty.
 - Draft response letter to PNOV.

5.2 Consent Order/Settlement Agreement

- Work with your Public Affairs Organization if the company releases information on Consent Orders/Settlement Agreements to the public:
 - Prepare response to inquiries from the press release.
- Draft Response letter for Consent Order/Settlement Agreement.
 - Obtain permission to request funds to pay Remedy.
- Prepare to assist management to meet enhancements (additional corrective actions) defined in the Consent Order/Settlement Agreement.

5.3 Enforcement Letter

There have been instances where the outcome of a case has been an Enforcement Letter, even when there has been an Enforcement Conference.