

OSHA Directives

CPL 2.95 - Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) sites.

- **Record Type:** Instruction
- **Directive Number:** CPL 2.95
- **Subject:** Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) sites.
- **Information Date:** 02/10/1992

OSHA Instruction CPL 2.95

February 10, 1992

Directorate of Compliance Programs

Subject: Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) Sites

A. PURPOSE. This instruction serves as clarification of OSHA's policy for inspections at Department of Energy GOCO sites.

B. SCOPE. This instruction applies OSHA-wide.

C. REFERENCE. Memorandum to the Chairman of the U.S. Atomic Energy Commission, (AEC) from the Secretary of Labor, dated February 4, 1974, Jurisdictional Authority - GOCO Sites.

D. ACTION. Regional Administrators and Area Directors shall ensure that the policy established by this instruction is transmitted to all Area and District Offices, and to appropriate staff.

E. FEDERAL PROGRAM CHANGE. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that a copy of this change is promptly forwarded to each State designee, using a format consistent with the Plan Change-Two-Way Memorandum in Appendix P, OSHA Instruction STP 2.22A, CH-2.

2. Explain the technical content of this change to the State designees as requested.

3. Inform State plan States with 4(b)(1) language in their occupational safety and health enabling legislation that they should follow OSHA's inspection policy contained in G. of this instruction. Those State plan States that do not include 4(b)(1) language in their enabling legislation are encouraged to honor OSHA's inspection policy with respect to new construction activities within DOE sites.

4. Ensure that State designees acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgment must include a description either of the State's plan to implement the change or the reasons why this change should not apply to that State.

5. Ensure that State designees submit a plan supplement, in accordance with OSHA Instruction STP 2.22A, CH-3, as appropriate, following the established schedule that is agreed upon by the State and Regional Administrator to submit non-Field Operations Manual/OSHA Technical Manual Federal program changes.

a. If a State intends to follow OSHA's policy described in this instruction, the State must submit either a revised version of this instruction, adapted as appropriate to reference State law, regulations and administrative structure, or a cover sheet describing how references in this instruction correspond to the State's structure. The State's acknowledgment of the Plan-Change Two-Way Memorandum may fulfill the plan supplement requirement if the appropriate documentation is provided.

b. If the State adopts an alternative to Federal guidelines, the State's submission must identify and provide a rationale for all substantial differences from Federal guidelines to allow OSHA to judge whether a different State procedure is as effective as comparable Federal guidelines.

6. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State personnel.

F. BACKGROUND. OSHA's jurisdictional policy with regard to DOE "GOCO" sites has been based on a 1974 letter from the Secretary of Labor to the former Chairman of the AEC, Dixy Lee Ray. Since the AEC had not challenged OSHA's position, which retained OSHA's authority to inspect new construction activity, a tacit acceptance by DOE of OSHA's interpretation of the jurisdictional lines was assumed.

A recent construction-related inspection at a DOE site resulted in citations which were issued to and contested by the contractor, who challenged OSHA's jurisdiction. DOE reevaluated their position with regard to exercise of jurisdiction, and supported the contractor's position.

Case law generally supports DOE's position. The Solicitor of Labor has recommended that OSHA not attempt to exercise jurisdiction over new construction activities within DOE sites.

G. INSPECTION POLICY. New construction activities within DOE sites will no longer be considered part of OSHA's jurisdiction. When such sites appear on targeting lists, they shall be deleted. If inspections are underway at such sites, they shall be terminated with appropriate explanations to the employer and to employee representative. Complaints from employees at such sites shall be referred to DOE for resolution.

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