

**[UNITED STATES SENATE COMMITTEE ON
GOVERNMENTAL AFFAIRS LETTERHEAD]**

June 22 1993

The Honorable Hazel R. O'Leary
Secretary
U.S. Department of Energy
Washington, D.C. 20585

Dear Madam Secretary:

I am writing to bring to your attention a recent report done for me by the General Accounting Office (GAO) regarding the DOE's Office of Environment, Safety and Health (EH) Site Representative Program ("Key Independent Oversight Program at DOE Needs Strengthening" -- GAO/RCED-93-85). At my request, the GAO reviewed the policies and performance of this important program since its inception in March of 1988.

As you know, the EH Site Representative program has gone through a number of changes since the National Academy of Sciences (NAS) recommended that it be created. For instance, in 1989, then DOE Secretary Watkins removed nuclear safety responsibilities from EH and established an Office of Nuclear Safety which reported to him. Then in 1991, after a major review of DOE's worker safety and health activities was done by OSHA, the EH site representative program expanded its coverage to more than 70 DOE sites across the country. Also, the program provided for increased site representative guidance, and initiated evaluations of DOE field offices and contractors with a system to followup on findings.

In the wake of your announcement on May 5th to transfer worker safety and health oversight to the Occupational Safety and Health Administration (OSHA), the GAO report provides a very timely assessment of how well this important aspect of DOE's safety and health oversight is functioning. As you know, I have advocated turning over worker safety and health to OSHA for several years now and I strongly commend you for taking this bold step.

However, I'm sure that you agree that the transfer of worker safety and health regulation to OSHA cannot be accomplished overnight. It will require a well thought out process where DOE can establish the necessary regulatory infrastructure through the Office of Environment, Safety and Health and the DOE line management and contractors can assume ownership of OSHA protection as a major component of their missions .

In this regard, the GAO has concluded that: "Since its inception in 1988, the ES&H Offices' Site Representative Program has not provided the vigorous independent oversight envisioned by [the NAS and OSHA]." Most importantly, GAO has identified several critical issues which the Department must address in order to reach the goal of successful transfer to OSHA. The more significant findings that GAO has made include:

- * DOE's site resident program lacks adequate staff and resources. Although the scope of responsibilities of the EH Site Representative Program has grown dramatically, from 17 to over 70 facility sites, the number of site residents has actually dropped to 10 people, 2 below the peak level reached in 1990. Funding levels for the site representative program were frozen in 1991 and never changed.

It's difficult to imagine that the two EH representatives at the Hanford site -- a 560-square-mile area consisting of 15,000 employees and hundreds of facilities -- can meet this enormous challenge. Moreover, there are 10 people in the field as ES&H worker safety inspectors responsible for some 12,700 federal and over 150,000 prime and subcontractor employees at DOE facilities across the nation.

- * DOE field office and contractor responses to findings are often inadequate. According to available data, between 1989 and 1991, there were some 764 findings of noncompliance reported by the site representatives. As of September 1992, 73 findings still remained unresolved. Since 1991, when the program changed from determining noncompliance to line management appraisals, there have been 154 findings of potentially serious weaknesses in occupational safety programs. DOE Line management and contractors submitted responses that were late or overdue for 126 findings (81%). Of the total number of findings, the site representatives followed up on less than half and only 18 or 11% of the total were on their way to being adequately resolved.

The failure to resolve problems, in at least one instance, contributed to a worker fatality. For example, a worker was killed in November of 1992, at the Oak Ridge site after a heavy piece of equipment fell on him. This tragedy occurred after construction safety violations had been repeatedly pointed out for several years by the Office of ES&H, and were never adequately resolved. Even today, in some cases, field offices are approving corrective actions that do not even address the underlying causes and deficiencies -- a prescription for future tragedies.

- * Worker health protection is no longer covered by site representatives -- As the scope of responsibilities have far outpaced the ability of the EH site representative program to address them, the important function of overseeing worker health protection has been dropped altogether. This glaring weakness is underscored by a February 1993 DOE review of 19 Tiger Team assessments which concluded that identification, control, and monitoring of chemical and environmental hazards are major widespread problems at almost every DOE site.

There are several instances where potentially serious risks of exposure to toxic and carcinogenic substances are repeatedly occurring. For instance, last year, two different DOE investigations found a rash of worker injuries spanning several years, from exposure to noxious high-level waste tank vapors at the Hanford site. Despite the increased frequency of injuries, line management and contractors repeatedly failed to provide adequate industrial hygiene protection, training and medical surveillance.

As you may know, I authored a provision in last year's Defense Authorization Act, that requires

the Department to establish a comprehensive medical surveillance program for workers exposed to radioactive and other hazardous substances. I am surprised that the DOE's budget for FY 1994 does not include any funds to set this program up. Moreover, by not covering worker health protection at DOE facilities with ES&H site representatives, the prospects of establishing a worker medical surveillance program are dim. I respectfully request that you provide me with a plan to implement this Provision of law, as soon as it is practicable.

The GAO has also made several important recommendations which I strongly endorse. They include:

- * Improve the Site Representative's coverage of line management's activities affecting occupational safety and health by reinstating the program's coverage of occupational health and staffing the program accordingly;
- * Improve the Site representative Program's ability to monitor line management's performance;
- * More effectively utilize the monitoring performed by the site representatives by developing a process for evaluating and rating the performance of DOE field offices and contractors; and
- * Improve the ES&H Office's ability to ensure that problems identified by the site representatives are resolved and corrected.

In order to address these recommendations, the DOE should perform a systematic evaluation of its personnel needs for safety and health protection, not only in the EShH Office but the other Program Support Offices as well. I have attached a list of questions which attempt to find out exactly what DOE currently has in terms of qualified personnel in the area of safety and health. I would appreciate answers to these questions as soon as it is practicable.

At the heart of guaranteeing a safe working environment in DOE are two issues: exercising leverage over DOE contractors so that the terms of OSHA compliance are being met; and holding DOE line-management accountable, as they would be in the private sector. We cannot afford to wait for these goals to be met until after OSHA provides external regulatory oversight at DOE. Your initiatives that allow unannounced safety and health inspections to resume and to hold contractor and DOE officials accountable for worker injuries and deaths are commendable first steps.

Finally, I wish to express my strong support for the selection of Dr. Tara O'Toole, as Assistant Secretary for the Office of Environment, Safety and Health. Dr. O'Toole brings excellent qualifications and insights at a critical time when they are sorely needed.

The occupational risks attendant with the stabilization, decontamination and decommissioning of thousands of facilities, interim and long-term management of vast amounts of radioactive and toxic wastes, and the restoration of some of the most contaminated zones in the country, could

prove to be, perhaps, the most dangerous risks ever encountered. DOE has not yet reached the stage where large numbers of workers will face these problems. But the window in time that will allow for adequate preparation for this dangerous work is fast closing

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If you have any questions please contact Mr. Robert Alvarez of my Committee staff at 224-4751. I appreciate the efforts you are taking and look forward to working with you on these important issues.

Sincerely,

John Glenn
Chairman