

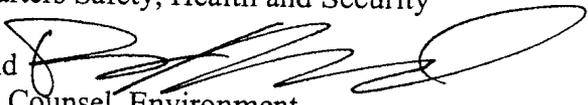


Department of Energy

Washington, DC 20585

January 22, 2010

MEMORANDUM TO: Cherylynn K. Williams
Safety & Occupational Health Manager
Office of Headquarters Safety, Health and Security

FROM: Bruce M. Diamond 
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SUBJECT: Regulation of DOE Contractors in DOE Headquarters Buildings

This is in response to your request for legal guidance regarding “whether 10 CFR 851 applies for contractors working in our Headquarters buildings.” Title 10 C.F.R. § 851.1(a) provides that “[t]he worker safety and health requirements in this part govern the conduct of contractor activities at DOE sites.” Subsection 851.1(b) provides, in pertinent part, that “[t]his part establishes the: (1) Requirements for a worker safety and health program that reduces or prevents occupational injuries, illnesses, and accidental losses by providing DOE contractors with safe and healthful workplaces at DOE sites.” A “DOE site” is defined in § 851.3 as “a DOE-owned or -leased area or location or other area or location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission.” The same section defines a DOE contractor as “any entity, including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission.” The James Forrestal and the DOE Germantown buildings are sites leased by DOE from GSA, controlled by DOE, and activities are performed in these facilities by DOE contractors. Thus, these buildings are “DOE sites” for the purposes of applying Part 851. To the extent “DOE contractors,” perform work in these sites in furtherance of a DOE mission, those contractors are subject to Part 851, unless the contractors come within one of the exclusions in 10 C.F.R. § 851.2.

The only exclusion that is potentially relevant to the question you posed¹ is found at § 851.2(a)(1): “[t]his part does not apply to work at a DOE site: (1) Regulated by the Occupational Safety and Health Administration” (OSHA). However, OSHA does not regulate DOE contractors in the Forrestal and DOE Germantown buildings.² Prior to the issuance of Part 851, DOE Headquarters

¹ The other exclusions pertain to Naval Reactors, radiological hazards or nuclear explosives operations and transportation to and from a DOE site.

² Section 4(b)(1) of the Occupational Safety and Health Act, *codified at* 29 U.S.C. § 653(b)(1), preempts OSHA from regulating “working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.” Since DOE has historically regulated its Headquarters contractors, OSHA does not currently regulate those contractors. However, if DOE seeks to have OSHA regulate DOE Headquarters contractors’ occupational safety and health, that can be accomplished by obtaining an agreement from OSHA to regulate and DOE relinquishing its regulatory authority over the contractors at those buildings.



contractors were regulated under their contracts with DOE, pursuant to DEAR and/or FAR clauses, and incorporation of the Contractor Requirements Document from DOE O 440.1A, *Worker Protection Management for DOE Federal and Contractor Employees*. Therefore, DOE contractors performing work in the Forrestal and DOE Germantown buildings are not excluded from the scope of Part 851 and are subject to the applicable requirements of that regulation.