

United States Government

Department of Energy

memorandum

Rocky Flats Field Office

DATE: JAN 27 2000

REPLY TO
ATTN OF: CMD:CD:00-01208

SUBJECT: Process Questions regarding Penalties for Fatalities, Contract DE-AC34-00RF01904

TO: Robert G. Card
President
Kaiser-Hill Company, L.L.C.

During recent negotiations on our new Rocky Flats Closure Contract DE-AC34-00RF01904, there have been extensive discussions and concern regarding the contract fee penalties for workplace fatalities. This memorandum is intended to clarify my intentions regarding the process by which I plan to apply the contract fee penalty provisions.

There are two provisions in the new contract that provide DOE the right to assess fee penalties for environment, safety and health and safeguards/security events or incidents: Contract Clause I.118, "Conditional Payment of Fee," and Clause B.6, "Fee Payment Schedule and Fee Payment Withholding." In accordance with the Clause I.13, "Order of Precedence -- Uniform Contract Format," the Schedule (Sections A through H) takes precedent over contract clauses (Section I).

There has been some confusion because Clause I.118 was not particularly crafted to work in a cost-plus-incentive-fee (CPIF) completion contract setting. For example, Clause I.118 contains reference to "evaluation periods," a technique and terminology inapplicable to our CPIF completion contract. Clause I.118 provides that the Manager may impose fee penalties, and the limits of those penalties are stated in terms of the fee earnings associated with an evaluation period. In our CPIF completion contract, as established in Clause B.6, fee will not be earned until the work is completed. There will be no fee earnings associated with any defined evaluation periods.

To address these matters, Clause B.6 has been negotiated to provide specific dollar limits on the different categories of events/incidents described therein. Clause B.6 provides that fee penalties may be imposed whenever appropriate, without regard to evaluation period. The limits on those penalties are defined in dollar terms, rather than in terms of the fee earned in a given period.

Robert G. Card
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For example, in the event of a workplace fatality, I would research the specific contributing factors that lead to the fatality. Both of the clauses referenced affirm my responsibility to review and consider any mitigating circumstances, and I would do so conscientiously. The penalty assessed would be separate from any imposition of Price Anderson Amendment Act fine or penalty, as envisioned under Clause B.6. Clause B.6 establishes certain upper limits for specific types of incidents (Category 1, 2, and 3). It will be my intent to apply the maximum penalty if the circumstances merit such strong action.



Paul Golan
Acting Manager

RC 1/14 by 11/4/02
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