



## Department of Energy

Washington, DC 20585

January 8, 2008

MEMORANDUM FOR RAYMOND L. ORBACH  
UNDER SECRETARY FOR SCIENCE

FROM: GLENN S. POBONSKY  
CHIEF HEALTH, SAFETY AND SECURITY OFFICER  
OFFICE OF HEALTH, SAFETY AND SECURITY

SUBJECT: Request for Concurrence on Three Temporary Variance  
Applications Regarding Fire Protection and Pressure Safety at  
the Oak Ridge National Laboratory

This memorandum is in response to an Office of Science request to the Chief Health, Safety and Security Officer to recommend approval of an Oak Ridge National Laboratory (ORNL)/University of Tennessee-Battelle application for temporary variances from certain requirements in title 10, Code of Federal Regulations, part 851 (10 C.F.R. 851), Appendix A, Section 2, "Fire Protection," and Section 4, "Pressure Safety."

In accordance with 10 C.F.R. 851, Appendix A, Section 2, contractors are required to meet applicable building codes and National Fire Protection Association (NFPA) codes and standards. This application requests a variance from certain provisions of several applicable building codes and NFPA codes and standards. Specifically, the application seeks relief from the requirements for controlling the storage of hazardous chemicals and for providing fire barriers in laboratory buildings. In Appendix A, Section 4, of this C.F.R., contractors are also required to meet certain American Society of Mechanical Engineers (ASME) codes. This application requests a variance from certain provisions of the applicable sections of ASME Boiler and Pressure Vessel Code (2004). Specifically, the application seeks relief from requirements, including those addressing the design and procurement, inspecting, testing, maintaining, and monitoring of performance of pressure vessels.

A temporary variance for a new safety and health standard is provided for in 10 C.F.R. 851.31(d)(1). This section of the regulation allows contractors additional time to achieve compliance when they cannot comply with the requirements by the effective date of a new standard because the necessary construction or alteration of a facility cannot be completed in time or because technical personnel, materials, or equipment are temporarily unavailable.



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We have evaluated these applications for temporary variances and have determined that the significant financial and personnel resources needed to comply with applicable fire and pressure safety codes and standards at this time do not constitute an acceptable basis for a temporary variance because the applicable codes and standards are not new health and safety standards. Indeed, the health and safety standards addressed in these variance applications date back to 1999. Building phase-out and phase-in considerations and budgetary and other resource constraints, as contained in the applications, do not satisfy the provisions in 10 C.F.R. 851.31(d)(1) for approving a temporary variance. Specifically, this variance application does not satisfy 10 C.F.R. 851.31(d)(1)(iv)(A).

Therefore, our evaluation of the information submitted in your variance applications indicates that temporary variances from requirements in 10 C.F.R. 851, Appendix A, Section 2, and Section 4 are inappropriate.

We believe the workplace conditions described in these variance applications are conditions of noncompliance with regulatory requirements. Therefore, we recommend that appropriate interim protective measures and corrective actions be implemented. Workers must be protected against existing hazards and corrective actions must be implemented in a reasonable timeframe. We also recommend that you enter these noncompliances into the Office of Enforcement's Noncompliance Tracking System (NTS) if noncompliances meet or exceed reporting thresholds. ORNL's action tracking system should be used to monitor the completion of the scheduled actions. The Office of Enforcement will monitor the completion of the correction actions within our NTS. Keeping the chemical storage, fire barrier, and pressure safety noncompliances in these tracking systems will help to ensure implementation of the corrective actions.

This recommendation is not prejudice to your submittal of another application. If you have any questions concerning your variance request, please contact me on 3-3777 or Dr. Patricia R. Worthington, Director, Office of Health and Safety, within the Office of Health, Safety and Security, at 3-5926.

cc: George J. Malosh, SC-3  
Arnold E. Guevara, HS-40  
Patricia R. Worthington, HS-10