



Department of Energy
Under Secretary for Nuclear Security
Administrator, National Nuclear Security Administration
Washington, DC 20585



July 13, 2018

Mr. Morgan Smith
President and Chief Executive Officer
Consolidated Nuclear Security, LLC
Y-12 National Security Complex
P.O. Box 2009 MS8001
Oak Ridge, Tennessee 37831-8001

SSA-2018-01

Dear Mr. Smith:

The Department of Energy (DOE), Office of Enterprise Assessments' Office of Enforcement has completed its investigation into the facts and circumstances associated with a security event discovered on March 16, 2017, involving the improper shipment, storage, and unauthorized access to classified information at the National Nuclear Security Administration (NNSA) Y-12 National Security Complex (Y-12). DOE provided the results of the investigation to Consolidated Nuclear Security, LLC (CNS) in an investigation report, *Improper Shipment, Storage, and Unauthorized Access to Classified Information*, dated January 17, 2018. In a letter dated February 5, 2018, CNS waived DOE's offer for an Enforcement Conference.

In 2016, CNS made a decision to vacate its Y-12 offsite records storage facility that met DOE requirements. To implement this decision, CNS sent boxes of inactive archived records to one of three U.S. National Archives and Records Administration (NARA) facilities: unclassified records went to two different Federal Records Centers (FRCs) based on whether the records were textual or nontextual, and classified records, regardless of medium, were transferred to an FRC authorized for storage of classified information. Physical transfer of textual records believed to be unclassified began in December 2016 and continued until suspended by CNS in March 2017 upon discovery that CNS had transferred classified information to an FRC that was not authorized to store classified information. CNS's classification review of the information involved in this security event identified textual data containing classified information up to and including Secret/Restricted Data.



Although the receiving FRC has access controls and security measures in place as required by NARA, these protection measures do not meet DOE's requirements for the protection and control of classified information. DOE considers this a preventable event and the result of a lack of attention and carelessness towards classified information security requirements. CNS did not identify or properly protect and control classified information from unauthorized disclosure. Furthermore, CNS's job scoping did not identify special circumstances or conditions possibly present given the historical nature of some archived records and potential risks due to the change in protection for the assets associated with this security event.

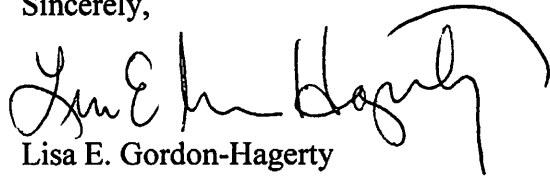
In accordance with 10 C.F.R. § 824.4(e), *Civil Penalties*, the Office of Enforcement and NNSA have elected to resolve potential instances of noncompliance with requirements enforceable under 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*, and documented in the referenced investigation report, through execution of a Settlement Agreement. In deciding to enter into this Settlement Agreement, the Office of Enforcement and NNSA considered CNS's immediate actions during the initial stages of developing and executing its recovery plans. The Office of Enforcement and NNSA also placed considerable weight on CNS's reevaluation of its initial corrective action plan for this event. CNS's revised corrective action plan has matured significantly, and includes actions recognizing the importance of work planning and engagement with security personnel.

DOE reserves the right to re-open this investigation if DOE later becomes aware that CNS provided any false or materially inaccurate information. Further, if there is a recurrence of classified information security deficiencies similar to those identified in this Settlement Agreement, or a failure to expeditiously complete all action items prescribed in the Settlement Agreement intended to prevent recurrence of the identified issues, then DOE may pursue additional enforcement activity. The Office of Enforcement and NNSA will continue to closely monitor CNS's implementation of DOE classified information security requirements until the issues associated with this Settlement Agreement are fully resolved.

Enclosed please find two signed copies of the Settlement Agreement. Please sign both, keep one for your records, and return the other copy to the Office of Enforcement within one week from the date of receipt. Please follow all instructions specified in the enclosure. By signing this Settlement Agreement, you agree to comply with all of the terms, including payment of the monetary remedy, specified in Section IV of the Settlement Agreement and in the manner prescribed therein.

If you have any questions concerning this Settlement Agreement, please contact Kevin Dressman, Acting Director, Office of Enforcement at 301-903-7707, or your staff may contact Ms. Carrienne Zimmerman, Director, Office of Security Enforcement, at 301-903-8996.

Sincerely,



Lisa E. Gordon-Hagerty
Administrator
National Nuclear Security Administration



Kevin L. Dressman
Acting Director
Office of Enforcement
Office of Enterprise Assessments

Enclosure: Settlement Agreement (SSA-2018-01)

cc: Geoffrey Beausoleil, NA-NPO
Kathy Brack, CNS

In the matter of) Report No. SSIMS – NPOY12-03/2017-0011
) Office of Enforcement Investigation Report
) (January 17, 2018)
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)
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Consolidated Nuclear Security, LLC)
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) Settlement Agreement SSA-2018-01

SETTLEMENT AGREEMENT AMONG THE U.S. DEPARTMENT OF ENERGY, THE
NATIONAL NUCLEAR SECURITY ADMINISTRATION, AND CONSOLIDATED
NUCLEAR SECURITY, LLC

I

Consolidated Nuclear Security, LLC (CNS) is responsible for the management and operation of the National Nuclear Security Administration (NNSA) Y-12 National Security Complex (Y-12) and the Pantex Plant. CNS is the prime contractor under Contract No. DE-NA0001942 (Contract) entered into with the NNSA. The period of performance for this contract began on July 1, 2014, and thus CNS became responsible for the proper handling, protection, and control of Y-12 archived records and other classified information at both sites.

II

In March 2017, CNS reported an incident of security concern (IOSC) in the Safeguards and Security Information Management System (SSIMS), Report No. SSIMS – NPOY12-03/2017-0011. The Office of Enforcement received CNS’s final inquiry report on July 25, 2017. The incident, which CNS discovered on March 16, 2017, involved the improper shipment and storage of classified inactive archived records, which were accessed by uncleared individuals (hereafter the “security event”).

CNS’s IOSC inquiry determined that Y-12 onsite records storage reached its capacity in early 2000. Archived records were stored in several different buildings throughout the Y-12 site. These buildings were not compliant with U.S. National Archives and Records Administration (NARA) requirements for storage of archived records from fire and natural disasters, but were

compliant for storage of classified information. In 2004, in an effort to ensure compliance with NARA records storage requirements, the Y-12 contractor leased an offsite records storage facility (ORSF) approximately six miles from the Y-12 main site. In 2005, the ORSF was approved for classified storage, and all records (both classified and unclassified) were transferred to this location.

CNS decided in 2016 to vacate its leased ORSF. To implement this decision, CNS sent boxes of inactive archived records, dating back to 1943, to one of three NARA facilities: unclassified records went to two different Federal Records Centers (FRCs) based on whether the records were textual or nontextual (e.g., film media), and classified records, regardless of medium, were transferred to an FRC authorized for storage of classified information. Physical transfer of textual records believed to be unclassified began in December 2016 and continued until suspended by CNS in March 2017 upon discovery that CNS had transferred classified information to an FRC that was not authorized to store classified information. CNS's classification review of the information involved in this security event identified textual data containing classified information up to and including Secret/Restricted Data (S/RD).

CNS records management personnel determined that the relocation of over 30,000 boxes of unclassified and classified archived records to FRCs did not meet CNS's criteria for a "formal project" and therefore did not develop a formal project plan for this activity. These personnel coordinated the transfer process with personnel at the three FRCs designated to receive Y-12 archived records with minimal advance coordination with CNS security personnel. They also decided that a special security plan was not required and that their existing security processes and procedures were sufficient to proceed. The job scoping did not identify special circumstances or conditions possibly present given the historical nature of some archived records and potential risks due to the change in protection for the assets associated with this security event.

On September 12, 2017, pursuant to 10 C.F.R. § 824.5, and based on the CNS IOSC inquiry report received July 25, 2017, and discussions with NNSA, the Office of Enforcement initiated an investigation into the security event. The Office of Enforcement investigation report, dated January 17, 2018, identified that CNS did not properly validate the contents of "historical" archived records boxes, which had traditionally been stored in areas approved for classified storage, before shipping them to an FRC that was not approved to receive and store classified information. In the absence of all required protection and control measures, classified information remained improperly secured at the FRC for seven months, and classified information was accessed and under the control of uncleared FRC personnel.

On November 8, 2017, following the Office of Enforcement's investigation, CNS sent a letter to the Office of Enforcement requesting a Settlement Agreement to resolve potential noncompliances with DOE classified information security requirements enforceable under 10 C.F.R. Part 824. CNS cited the following immediate actions it had taken: (1) temporarily suspending shipments of archived records to the FRC; (2) traveling to the FRC to retrieve the classified documents that were discovered; (3) conducting an onsite inspection at the FRC of 84 CNS archived records boxes that were in the same CNS shipment of boxes found to contain classified documents; and (4) conducting two 100 percent inspections of all the boxes remaining

at the CNS ORSF. CNS also offered the following qualifying information to support its request for settlement relative to this security event: (1) a demonstrated track record for transparent reporting; (2) timely reporting; (3) a thorough investigation; and (4) corrective actions.

CNS completed a formal causal analysis, dated September 28, 2017, that identified two root causes and four contributing causes, related to records boxes that were packed and transferred between 1943 and 2002 (i.e., before CNS's tenure). As a result, the corrective actions identified through CNS's issues management process mainly focused on training, procedures, and detection processes to provide a more rigorous approach to information control. However, the causal analysis also identified two contributing causes during CNS's tenure, which included the lack of formal work planning for the transfer of records associated with this security incident. Thus, CNS identified as a corrective action to form a cross functional team to evaluate process changes that ensure safeguards and security involvement in risk assessment and formal work planning for activities involving the transfer of material off the Y-12 site.

On February 5, 2018, CNS sent a letter to the Office of Enforcement in response to the Office of Enforcement's investigation report. In that letter, CNS stated that its corrective action plan had matured significantly and that actions recognizing the importance of work planning and engaging information security personnel remained components of the plan. CNS established the following corrective action plan objectives to: (1) strengthen its planning processes to ensure that risks associated with offsite material movements are addressed; (2) prevent new defects from being introduced into archived records; (3) relocate records where risk has not been demonstrated to be low; and (4) evaluate whether alternatives to records destruction by the FRC would be viable and reduce risk.

III

Pursuant to 10 C.F.R. § 824.4(e), DOE may enter into a settlement, with or without conditions, at any time during an outstanding enforcement proceeding if the settlement is consistent with the objectives of the Atomic Energy Act of 1954, as amended, and DOE classified information protection requirements enforceable under 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*.

To resolve potential noncompliances with DOE classified information security requirements identified in the investigation report and in consideration of CNS's final inquiry, causal analyses, and associated corrective actions for the security event, which the Office of Enforcement and NNSA found to be comprehensive and appropriate, the Office of Enforcement and NNSA have elected to enter into settlement. The Office of Enforcement, NNSA, and CNS have reached agreement to resolve this matter through execution of this Settlement Agreement.

IV

Accordingly, the terms of this Settlement Agreement are as follows:

In consideration of the mutual agreements set forth in this section, the sufficiency and adequacy of which are acknowledged by the Office of Enforcement, NNSA, and CNS (hereinafter the

“Parties”), the following terms represent agreement by the authorized representatives of the Parties to resolve by settlement the potential noncompliances at Y-12 National Security Complex in lieu of an enforcement action that NNSA may issue pursuant to 10 C.F.R. § 824.6.

1. CNS shall fully implement all corrective actions previously committed to in its corrective action plan resulting from its September 2017 *Casual Analysis for Records Transfer to FRC* report. In addition, CNS shall fully implement all corrective actions outlined in the CNS letters requesting settlement, dated November 8, 2017, and February 5, 2018. CNS shall ensure that its previously planned commitments, identified in the September 2017 causal analysis report and the above-mentioned settlement request letters, address the following areas of emphasis:
 - a. CNS shall ensure that corrective actions focus on more effective project execution as it relates to the handling of classified information.
 - b. CNS shall develop and expeditiously execute a plan to retrieve archived record boxes that pose a potential risk of containing classified information.
2. CNS shall notify the Office of Enforcement and NNSA in writing upon completion of the actions specified in item 1 above.
3. CNS shall provide to the Office of Enforcement and NNSA copies of the results of the final effectiveness review that the CNS issues management process requires.
4. CNS shall pay the amount of \$73,000, reflecting an agreed-upon monetary remedy in lieu of the issuance of an enforcement action with the proposed imposition of a civil penalty pursuant to 10 C.F.R. § 824.6.
5. CNS agrees to return a signed copy of this Settlement Agreement, within one week from the date of receipt, by overnight carrier to the address below:

Director, Office of Enforcement
Attention: Office of the Docketing Clerk, EA-10
U.S. Department of Energy
19901 Germantown Road
Germantown, MD 20874-1290
6. The effective date of this Settlement Agreement shall be the date on which CNS signs this Settlement Agreement.
7. CNS shall remit the monetary remedy of \$73,000 by check, draft, or money order payable to the Treasurer of the United States (Account Number 891099) within 30 calendar days after the effective date of this Settlement Agreement. Payment shall be sent by overnight carrier to the address identified in item 5 above. To remit the monetary remedy by electronic funds transfer (EFT), please have your accounting department contact the Office of Enforcement’s Docket Clerk at (301) 903-2493 for EFT wiring instructions.

8. This Settlement Agreement shall constitute a full and final settlement of the potential noncompliances identified in the referenced SSIMS report, subject to the following:
 - (a) CNS's payment of the monetary remedy in accordance with item 4 above; and
 - (b) CNS's timely completion of all actions set forth in items 1, 2, and 3 above to the satisfaction of NNSA.
9. CNS agrees that the monetary remedy or any costs, as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, incurred by, for, or on behalf of CNS relating to coordination and cooperation with DOE concerning the investigation of matters covered by this Settlement Agreement are not allowable under the contract. However, costs incurred by, for, or on behalf of CNS relating to the development and implementation of corrective actions, including costs associated with the effectiveness review required under item 1 above, may be considered allowable costs under the contract at the discretion of the Contracting Officer in accordance with applicable law.
10. This Settlement Agreement does not preclude the Office of Enforcement from re-opening the investigation or preclude NNSA from issuing an enforcement action under 10 C.F.R. § 824.6 with respect to a potential noncompliance if: (a) after the effective date (as defined in item 6 above), NNSA becomes aware of any false or materially inaccurate facts or information provided by CNS; (b) there is a recurrence of classified information security deficiencies similar to those identified above; or (c) CNS fails to complete all actions identified in items 1, 2, and 3 above in a timely and effective manner to prevent recurrence.
11. Any modification to this Settlement Agreement requires the written consent of all Parties.
12. CNS waives any and all rights to appeal or otherwise seek judicial or administrative review of the terms of this Settlement Agreement. DOE and NNSA retain the right to judicially enforce the provisions of this Settlement Agreement by all available legal means.
13. This Settlement Agreement is issued pursuant to DOE's authority under Section 234B of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2282b), and the implementing provisions of Part 824 governing enforcement of DOE classified information security requirements.
14. This Settlement Agreement shall become a Final Order after the signed copy, referenced in item 3 above, is filed by the Office of Enforcement's Office of the Docketing Clerk.

On behalf of my respective organization, I hereby agree to and accept the terms of the foregoing Settlement Agreement.

FOR Consolidated Nuclear Security, LLC FOR National Nuclear Security Administration

Morgan Smith Date 7/23/2018
Morgan Smith
President and Chief Executive Officer
Consolidated Nuclear Security, LLC

Lisa E. Gordon-Hagerty Date JUL 13 2018
Lisa E. Gordon-Hagerty
Administrator
National Nuclear Security Administration

FOR Office of Enforcement

Kevin L. Dressman Date JUL 13 2018
Kevin L. Dressman
Acting Director
Office of Enforcement
Office of Enterprise Assessments