



Department of Energy

Washington, DC 20585

July 10, 2024

Mr. Russell Bailey
General Counsel
Rose Law Firm
120 East Fourth Street
Little Rock, Arkansas 72201

RE: Harris Rebar Placing, LLC (WEA-2024-04)

Dear Mr. Bailey:

This letter refers to the Department of Energy's (DOE) investigation into the facts and circumstances regarding the worker injury that occurred on May 25, 2023, at the Fermi National Accelerator Laboratory (Fermilab). The injury occurred when a Harris Rebar Placing, LLC (HRP) employee fell 23 feet to the concrete below during construction activity at the site.

DOE considers the fall event to be of high safety significance. The fall occurred when the HRP ironworker was preparing to secure a rebar template bar to the east side of a 26.5-foot-tall concrete formwork wall. The ironworker fell backwards, striking a diagonal brace before landing on the concrete slab, approximately 23 feet below. The ironworker sustained serious injuries, including head trauma, and was air lifted to a local hospital. The event revealed deficiencies in: management responsibilities, hazard prevention and abatement, construction safety, safety and health standards, and training and information.

Based on an evaluation of the evidence in this matter, DOE concludes that HRP violated requirements prescribed under 10 C.F.R. Part 851, *Worker Safety and Health Program*. Accordingly, DOE hereby issues the enclosed Preliminary Notice of Violation (PNOV) which cites one Severity Level I violation with a total base civil penalty of \$118,000.

Based on the severity of the injuries, inadequate training (including post-event), and minimal corrective actions, DOE does not grant mitigation. As a result, the total proposed civil penalty is \$118,000.

Pursuant to 10 C.F.R. § 851.42, *Preliminary notice of violation*, you are obligated to submit a written reply within 30 calendar days of receipt of the enclosed PNOV and to follow the instructions specified in the PNOV when preparing your response. If you fail to submit a reply within the 30 calendar days, then in accordance with 10 C.F.R. § 851.42(d), you relinquish any right to appeal any matter in the PNOV, and the PNOV will constitute a final order.

After reviewing your reply to the PNOV, DOE will determine whether any further activity is necessary to ensure compliance with DOE worker safety and health requirements. DOE will continue to monitor the completion of corrective actions until this matter is fully resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony C. Pierpoint', written over a light gray circular stamp.

Anthony C. Pierpoint
Director
Office of Enforcement
Office of Enterprise Assessments

Enclosures: Preliminary Notice of Violation (WEA-2024-04)
Electronic Payment Processing Instructions

cc: Angela Aparicio, Fermi Research Alliance, LLC
Roger Snyder, SC-FSO

Preliminary Notice of Violation

Harris Rebar Placing, LLC
Fermi National Accelerator Laboratory

WEA-2024-04

A U.S. Department of Energy (DOE) investigation into the facts and circumstances associated with the May 25, 2023, worker injury at the Fermi National Accelerator Laboratory's (Fermilab) Proton Improvement Plan II (PIP-II) linear accelerator (LINAC) construction site revealed violations of DOE worker safety and health requirements by Harris Rebar Placing, LLC (HRP). The injured worker was an employee of HRP, subcontractor to Whittaker Construction and Excavating, Inc. (WCEI). At the time of the event, WCEI was under contract with Fermi Research Alliance (FRA) as the general construction contractor for the PIP-II LINAC construction project.

The injury occurred when the worker, employed as an ironworker by HRP, was preparing to secure a rebar template bar to the east side of a 26.5-foot-tall concrete formwork wall, and fell backwards, striking a diagonal brace before landing on the concrete slab approximately 23 feet below. The worker sustained serious injuries, including head trauma, and was air lifted to a local hospital.

Pursuant to Section 234C of the Atomic Energy Act of 1954, as amended, and DOE regulations set forth in 10 C.F.R. Part 851 (Part 851), *Worker Safety and Health Program*, DOE hereby issues this Preliminary Notice of Violation (PNOV) to HRP. The violations include deficiencies in management responsibilities, hazard prevention and abatement, safety and health standards, construction safety, and training and information. DOE has grouped and categorized the violations as one Severity Level I violation.

Severity Levels are explained in Part 851, Appendix B, *General Statement of Enforcement Policy*. Subparagraph VI(b) (1) states that “[a] Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment.”

DOE imposes a total proposed civil penalty of \$118,000.

As required by 10 C.F.R. § 851.42(b) and consistent with Part 851, Appendix B, the violation and related deficiencies are identified below. If this PNOV becomes a final order, HRP must prominently post a copy of this PNOV at or near the location where the violation occurred until the violation is corrected in accordance with 10 C.F.R. § 851.42(e).

I. VIOLATION

Management Responsibilities, Hazard Prevention and Abatement, Safety and Health Standards, Construction Safety, and Training and Information

Title 10 C.F.R. § 851.10, *General requirements*, subsection (a), states that “[w]ith respect to a covered workplace for which a contractor is responsible, the contractor must: (1) [p]rovide a place of employment that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers; and (2) [e]nsure that work is performed in accordance with: (i) [a]ll applicable requirements of [Part 851]; and (ii) [t]he worker safety and health program for that workplace.”

Title 10 C.F.R. § 851.20, *Management responsibilities*, subsection (a), states that “[c]ontractors are responsible for the safety and health of their workforce and must ensure that contractor management at a covered workplace... (1) [e]stablish written policy, goals, and objectives for the worker safety and health program....”

Title 10 C.F.R. § 851.22, *Hazard prevention and abatement*, subsection (a), states that “[c]ontractors must establish and implement a hazard prevention and abatement process to ensure all identified potential hazards are prevented or abated in a timely manner. (1) For hazards identified... controls must be incorporated in the appropriate... procedure. (2) For existing hazards identified in the workplace, contractors must... (iii) [p]rotect workers from dangerous safety and health conditions.” Subsection (c) states that “[c]ontractors must address hazards when selecting or purchasing equipment, products, and services.”

Title 10 C.F.R. § 851.23, *Safety and health standards*, subsection (a), states that “[c]ontractors must comply with the following safety and health standards that are applicable to the hazards at their covered workplace:... (7) Title 29 [C.F.R.] Part 1926, *Safety and Health Regulations for Construction*....”

Title 10 C.F.R. § 851.24, *Functional areas*, subsection (a), states that “[c]ontractors must have a structured approach to their worker safety and health program which at a minimum, include provisions for the following applicable functional areas in their worker safety and health program:... construction safety....” Subsection (b) states that “[i]n implementing the structured approach required by [subsection] (a) of this section, contractors must comply with the applicable standards and provisions in appendix A of this part, entitled ‘Worker Safety and Health Functional Areas.’”

Title 10 C.F.R. § 851, *Appendix A to Part 851 – Worker Safety and Health Functional Areas*, section 1, *Construction Safety*, subsection (a), states that “[f]or each separately definable construction activity... the construction contractor must... (1) [p]repare... an activity hazard analysis.... Such analyses must: (i) identify foreseeable hazards and planned protective measures; (ii) address further hazards revealed by supplemental site information....”

Title 10 C.F.R. § 851.25, *Training and information*, subsection (a), states that “[c]ontractors must develop and implement a worker safety and health training and information program to ensure that all workers exposed or potentially exposed to hazards are provided training and

information on that hazard in order to perform their duties in a safe and healthful manner.” Subsection (b) states that “[t]he contractor must provide: (1) [t]raining and information for new workers, before or at the time of initial assignment to a job involving exposure to a hazard; (2) [p]eriodic training as often as necessary to ensure that workers are adequately trained and informed; and (3) [a]dditional training when safety and health information or a change in workplace conditions indicates that a new or increased hazard exists.”

Title 29 C.F.R. § 1926.501, *Duty to have fall protection*, subsection (b)(5), states that “[e]ach employee on the face of formwork...shall be protected from falling 6 feet (1.8 m) or more to lower levels by personal fall arrest systems [PFASs]...or positioning device systems [PDSs].”

Title 29 C.F.R. § 1926.502, *Fall protection systems criteria and practices*, subsection (d)(15), states that “[a]nchorage used for attachment of personal fall arrest equipment shall be... designed, installed, and used as follows...(i) as part of a complete [PFAS]...” Subsection (e) states that “[PDSs]...(i) shall be rigged such that an employee cannot free fall more than 2 feet.”

Title 29 C.F.R. § 1926.503, *Training program*, subsection (a)(1), states that “[t]he employer shall provide a training program for each employee who might be exposed to fall hazards... and shall train each employee in the procedures to be followed in order to minimize these hazards.” Subsection (a)(2) states that “[t]he employer shall assure that each employee has been trained...by a competent person qualified in...(iii) [t]he use and operation of [PFASs]...and other protection[s] to be used [e.g., PDS].” Subsection (b)(1) states that “[t]he employer shall verify compliance with paragraph (a) of this section by preparing a written certification record.... If the employer relies on training conducted by another employer...the certification record shall indicate the date the employer determined the prior training was adequate....”

Fermi Research Alliance (FRA) *Worker Safety and Health Program*, revision 15, September 28, 2022, *Executive Summary*, states that “[t]he requirements of the WSHP [Worker Safety and Health Program] apply to...subcontractors. FRA communicates WSHP requirements through FESHM [Fermilab Environment, Safety and Health Manual].... FRA also expects all subcontractors to comply with WSHP requirements provided to them in the subcontract *ESH Requirements Document*, Division 1, section 013100.... The FESHM 7000 series, *Occupational and Subcontractor Safety*, defines this process.” Section 2.1, *Construction Safety*, states that “[a]ll subcontractors who perform work at Fermilab sites must comply with the provision of 10 C.F.R. 851 Worker Safety and Health Program. FRA flows down these requirements to subcontractors and their employees through Contract terms and conditions.... All Subcontractors are required to have their own Construction Safety Plan and/or [Hazard Analysis], depending upon the complexity of the project, in place prior to starting work.”

FRA FESHM 7010, *Construction ES&H Program*, August 2022, section 7.6.1, states that “[a]ll fall hazards equal to or greater than six (6) feet will have 100% fall protection for all Subcontractor’s and/or Sub-tier subcontractor’s employees.” Section 7.6.4 states that “[a]ll workers using [a] fall arrest harness must be specifically trained in their use.” Section 013100, *Environmental, Safety, and Health Requirements*, subsection 1.11, *Hazard Analysis*, paragraph D.6, states that “[s]pecific procedures in the area of fall protection...may be required as job conditions dictate....” Section 3.4, *Subcontractor Training*, paragraph A.2, states that “[a]ll Subcontractors performing work at Fermilab shall provide to their employees any necessary

ES&H [environment, safety, and health] training as may be required by federal...regulations and as appropriate for their Subcontract activities....” Paragraph C states that “[s]ubcontractors shall maintain on-site...any and all occupational safety...records...includ[ing]...training records...for...Fall Protection.” Section 3.7, *Fall Protection*, states that “[a]ll fall hazards...greater than six (6) feet will have 100% fall protection for all Subcontractor and Sub-tier employees.”

FRA FESHM 7060, *Fall Protection Program*, February 2021, section 4.0, *Program Description*, states that “[a]ny...subcontractor...exposed to a fall hazard...must be trained...[in] the selection and use of...personal fall arrest equipment. For all construction activities, the fall hazard cannot be at or greater than six (6) feet.” Section 5.1, *Education and Training Requirements*, states that “[a]ny...subcontractor involved in work activities and exposed to a fall hazard must be trained [in] the use of fall protection equipment. At a minimum, the training shall include...[t]he procedures...to minimize fall hazards, [t]he correct way to use...fall protection systems, [and] [i]dentification of required anchor points....”

FRA *Subcontract Number 6904363 For Construction of the PIP-II Linac Complex Between FRA and Whittaker Construction and Excavating, Inc.*, December 16, 2022, section 3.7, *Fall Protection*, states that “[a]ll fall hazards...greater than six (6) feet will have 100% fall protection for all Subcontractor and Sub-tier employees.”

WCEI *Safety Manual for [Fermilab]*, July 2015, chapter 7.1, *Subcontractor Job Safety Rules, General Safety and Health Provisions*, states that “[c]ontractor requires full compliance with requirements of the Occupational Safety and Health Standards (29 C.F.R. 1926)...by subcontractor.... Subcontractor shall comply with said requirements, standards, and regulations, and require and be directly responsible for compliance therewith on the part of its...subcontractors.”

WCEI *Subcontract Agreement No. 2022003-014 with Nucor Harris Rebar Midwest, LLC, PIP-II Linac Complex*, December 13, 2022, states that “[s]ubcontractors and their [s]ubcontracts shall comply with...[a]ll provisions of Federal, State and Local Law....” *Additional Provisions and Conditions of Subcontract*, paragraph 15, states that “[s]ubcontractor shall comply with...all safety measures initiated by...Contractor...or... Owner...and with all applicable laws,...rules, [and] regulations....” Paragraph 16 states that “Every provision of the General Contract required to be incorporated into subcontracts is hereby incorporated to the extent directly related to Subcontractors scope of work.”

HRP *Installation Subcontract Agreement Harris Contract No.03722672*, January 16, 2023, states that “Nucor Harris Rebar Midwest LLC (hereinafter ‘Subcontractor’ [and] Harris Rebar Placing, LLC...(hereinafter ‘Installer’).” *Article 9 – Safety* states that “[i]nstaller...warrants that it has fully implemented a comprehensive and fully supervised Safety Program...and agrees to be bound by the more stringent requirements of O.S.H.A...and all applicable health and safety standards.” *Article 15 – Laws, Regulations, and Ordinances*, paragraph b, states that “Installer shall comply with all Federal...laws [and] regulations...applicable to the Work under this Agreement.” *Exhibit “B” Health and Safety Policy*, states that “[i]t is our responsibility to ensure...complete compliance with all Occupational Health and Safety laws, including Regulations and Standards. We meet this objective by:...5. Hazard Correction – Fix the

hazards...6. Training – Train all Managers, Supervisors and Team Members to perform work safely and recognize and respond to hazards....” *Exhibit “B” Installer’s Safety Responsibilities and Requirements*, paragraph 2, states that “[t]he Installer shall comply with all applicable laws, regulations...and conditions of each Contract, and rules or orders of any public authority having jurisdiction relating to safety....” Paragraph 3 states that “[t]he Installer is responsible to make certain that all personnel are properly trained and instructed in all jobs which require specific training and/or competency to meet all applicable [Occupational Safety and Health Administration] regulations...and Federal law....” Paragraph 7 states that “[t]he Installer is responsible for providing Personal Protective Equipment and for training in the proper use....”

HRP *Field Practices (Red Book)*, April 2018, *Safety Responsibilities*, states that “[m]anagement will ensure...[a] competent person is appointed as a supervisor...[and] [p]roper training for all teammates.... This includes...specific training and appropriate refresher training...[m]easures and procedures required by law are carried out in the workplace.... Supervisors/[f]oremen will ensure [t]eammates are...properly trained on the use of protective equipment...appropriate to the work performed.” *General Jobsite Safety Rules* states that “[s]pecific fall protection requirements will be noted in the Site-Specific Safety Plan per project.” *Training* states that “[t]raining will be conducted...according to regulatory standards.”

HRP *Injury and Illness Prevention Program (IIPP) Section 1*, revision 1, March 22, 2023, *Placing Manager Responsibilities*, states that “[i]t is [HRP’s] responsibility...to ensure...a...safe work environment for all employees. This shall be accomplished by complete compliance with all [o]ccupational [h]ealth and [s]afety laws including [r]egulations and [s]tandards, assisted by ongoing...safety training programs....” *[HRP] Contractor Representative - Field Safety Responsibilities*, states that “[m]anagers...[t]rain all employees in the safe performance of their jobs. This includes...specific training.” *Foreman/General Foreman Responsibilities*, states that “[foremen are] responsible to train...workers in the safe performance of their duties.”

HRP *IIPP Section 6*, revision 0, January 31, 2013, *Training*, states that “[i]t is the responsibility of the supervisors to train and to supervise workers in the safe performance of their duties...keeping records of any instruction [or] training....”

HRP *Site Specific Safety Plan, PIP-II-LINAC Complex*, December 20, 2022, *Section 1: Introduction*, states that “[i]t is the responsibility of the Project Superintendent to oversee the Project Safety Program.... It is the responsibility of the...Foreman to implement and enforce this Site Specific Safety Plan....” *Section 3: Fall Prevention/Fall Protection Work Plan* states that “[t]he purpose of this plan is to...[e]nsure that employees are trained...prior to placing reinforcing steel.... This plan is designed...to establish the procedures...to prevent falls to lower levels.... It is the responsibility of the on-site safety supervisor to implement this fall protection plan.”

Doka® *Framed formwork Framax S Xlife, User Information, Instructions for assembly and use*, 999783014, January 2019, *Basic safety warnings, user target groups*, page 4, states that “[a]ll persons working with the product...must be familiar with...all the safety instructions.... In all cases, users must ensure compliance with the national applicable laws, standards and rules....” *Attachment points for personal fall arrest equipment*, page 17, states that “[t]he attachment points shown...for [PFAS] conform to OSHA requirements...” and are illustrated via diagram.

Doka® Technical Newsletter 850, *Anchorage points for personal fall arrest system (PFAS)*, January 10, 2017, page 1, states that “[t]his Technical Newsletter shows the OSHA regulations compliant anchorage points for attaching a [PFAS] to Doka formwork systems.” Further, on page 2, a diagram of the Framax S Xlife panel shows the manufacturer-approved, OSHA-compliant PFAS anchorage points.

Werner® *User Instructions, Bantam™ Self Retracting Lifelines, Bantam 6*, November 2021, page 1, states that “WARNING!...[b]efore using a fall arrest system, users must be trained in the safe use of the system, as required by OSHA 29 CFR...1926.503, or local safety regulations.” *GENERAL SAFETY INFORMATION*, page 2, states that “3. [d]o not use or install equipment without proper training from a ‘competent person’ as defined by OSHA 29 CFR 1926.32(f).” *Use Instructions*, page 3, states that “2. [b]efore using a [PFAS], employees must be trained in accordance with [the] requirements of OSHA 29 CFR... 1926.503 in the safe use of the system and its components...” and “4. [t]he complete fall arrest system must be planned (including all components, calculating fall clearance, and swing fall) before using.” *Anchorage*, page 3, states that “[a]ll anchorages to which the SRL attaches must meet the requirements of...OSHA 29 CFR...1926.”

Contrary to the above requirements, HRP failed to comply with applicable requirements of Part 851 and the FRA WSHP. Specific examples include the following:

1. HRP failed to protect ironworkers from fall hazards while working on formwork above six feet. Specifically, HRP did not develop and implement adequate fall protection measures for ironworkers climbing Doka® formwork. HRP’s Site Specific Safety Plan and job hazard risk analysis stated “100% tie-off;” however, HRP did not develop work instructions that included identification of formwork anchorage points. Consequently, an ironworker fell approximately 23 feet from the face of formwork because they did not attach their PFAS or PDS to a manufacturer-approved, OSHA-compliant anchorage point, resulting in serious injuries.
2. HRP failed to ensure that ironworkers were trained by a competent person in the use and operation of PFASs and PDSs. Specifically, HRP relied on previous training by labor unions (i.e., Ironworkers Local 1) but did not verify the adequacy of that training or ensure that a competent person trained ironworkers on the specific PFAS and PDS used on the PIP-II LINAC project. Consequently, ironworkers did not have a clear understanding of the use and operation of the HRP-issued PFAS or PDS while climbing Doka® formwork.

Collectively, these noncompliances constitute a Severity Level I violation.

Base Civil Penalty – \$118,000

Proposed Civil Penalty (no mitigation granted) – \$118,000

II. REPLY

Pursuant to 10 C.F.R. § 851.42(b)(4), HRP is hereby obligated to submit a written reply within 30 calendar days of receipt of this PNOV. The reply should be clearly marked as a “Reply to the Preliminary Notice of Violation.”

If HRP chooses not to contest the violation set forth in this PNOV and the proposed remedy, then the reply should state that HRP waives the right to contest any aspect of this PNOV and the proposed remedy. In such case, the total proposed civil penalty of \$118,000 must be remitted within 30 calendar days after receipt of this PNOV. Remittance of payment must be submitted via Electronic Funds Transfer (EFT) or ACH Transfer to DOE through the U.S. Treasury. The Office of Enforcement must be copied at enforcementdocketclerk@hq.doe.gov when the electronic payment is submitted to the U.S. Treasury. Instructions for remitters sending payments in U.S. dollars via EFT or ACH Transfer are enclosed. This PNOV will constitute a final order upon the filing of the reply.

If HRP disagrees with any aspect of this PNOV, including the proposed civil penalty, then as applicable and in accordance with 10 C.F.R. § 851.42(c)(1), the reply must: (1) state any facts, explanations, and arguments that support a denial of an alleged violation; (2) demonstrate any extenuating circumstances or other reason why the civil penalty should not be imposed or should be mitigated; and (3) discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE. In addition, 10 C.F.R. § 851.42(c)(2) requires that the reply include copies of all relevant documents.

If HRP fails to submit a written reply within 30 calendar days of receipt of this PNOV, then pursuant to 10 C.F.R. § 851.42(d), HRP relinquishes any right to appeal any matter in this PNOV and this PNOV will constitute a final order.

Please submit your reply to the Director, Office of Enforcement by email to enforcementdocketclerk@hq.doe.gov.

A copy of the reply should also be sent to the Manager of the DOE Fermi Site Office.



Anthony C. Pierpoint
Director
Office of Enforcement
Office of Enterprise Assessments

Washington, D.C.
This 10th day of July 2024