



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



April 28, 2017

VIA OVERNIGHT UPS MAIL CARRIER

Mr. Morgan N. Smith  
President and Chief Executive Officer  
Consolidated Nuclear Security, LLC  
301 Bear Creek Road  
P.O. Box 2008  
Oak Ridge, Tennessee 37831

WCO-2017-01

Dear Mr. Smith:

The Office of Enterprise Assessments' Office of Enforcement has completed its review of the facts and circumstances associated with a June 30, 2016, event during which an employee fell from a fixed ladder into a utility pit at the Y-12 National Security Complex. Consolidated Nuclear Security, LLC (CNS) documented this event in the Department of Energy's (DOE) Noncompliance Tracking System under report NTS-NPO--CNS-Y12 Site-2016-0002, *Employee Fall in Utility Pit*, dated September 21, 2016.

On June 30, 2016, a Utilities Maintenance Operations worker fell while ascending an individual rung pit ladder to exit the utilities pit. The worker's fall resulted in a compound fracture to his right leg. The Y-12 Fire Department responded to the scene, rendered aid, and extricated the employee from the pit. The employee was transported to the local hospital for treatment. The event revealed deficiencies in CNS's processes for hazard identification, prevention, control and abatement, and confined space procedures.

In accordance with 10 C.F.R. § 851.41, *Settlement*, the National Nuclear Security Administration (NNSA) and the Office of Enforcement have elected to resolve any potential noncompliances with requirements enforceable under 10 C.F.R. Part 851, *Worker Safety and Health Program*, through execution of a Consent Order. In deciding to enter into this Consent Order, NNSA and the Office of Enforcement placed considerable weight on CNS's investigation of the event, and credible corrective actions to improve work planning and control procedures.



DOE/NNSA reserves the right to re-open this investigation if it later becomes aware that CNS provided any false or materially inaccurate information. Further, if there is a recurrence of worker safety and health deficiencies similar to those identified in this Consent Order, or a failure to comply with the terms and conditions prescribed in the Consent Order (or other related actions that CNS subsequently determines to be necessary) to prevent recurrence of the identified issues, then NNSA and the Office of Enforcement may pursue additional enforcement activity. NNSA Headquarters, the NNSA Production Office, and the Office of Enforcement will continue to closely monitor CNS's implementation of worker safety and health requirements until the issues associated with this Consent Order are fully resolved.

Enclosed please find two signed copies of the Consent Order. 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 Consent Order, you agree to comply with all of the terms, including payment of the monetary remedy, specified in section IV of the Consent Order and in the manner prescribed therein.

If you have any questions concerning this Consent Order, please contact Dr. Anthony Pierpoint, Director, Office of Worker Safety and Health Enforcement, at 301-903-0100.

Sincerely,



Frank G. Klotz  
Administrator  
National Nuclear Security Administration



Steven C. Simonson  
Director  
Office of Enforcement  
Office of Enterprise Assessments  
Department of Energy

Enclosure: Consent Order (WCO-2017-01)

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



On September 21, 2016, CNS voluntarily submitted report number NTS-NPO--CNS-Y-12 Site-2016-0002, *Employee Fall in Utility Pit* into the Department of Energy's (DOE) Noncompliance Tracking System (NTS).

On October 13, 2016, the DOE Office of Enforcement issued to CNS a notice of intent to investigate the event due to the serious nature of the injury, gravity of the apparent regulatory violations, and potential for fatality. On November 18, 2016, CNS submitted a request for a Consent Order. Subsequently, the Office of Enforcement, in consultation with NNSA Headquarters and NPO, agreed to a Consent Order with CNS to settle the matter.

### III

Pursuant to 10 C.F.R. § 851.41, at any time during enforcement proceedings, DOE may resolve any outstanding issues with a Consent Order if the settlement is consistent with 10 C.F.R. Part 851, *Worker Safety and Health Program*.

To resolve potential noncompliances with worker safety and health requirements and in consideration of CNS's investigation, causal analyses, and associated corrective actions taken since the submission of the NTS report identified above, which NNSA found to be comprehensive and appropriate, NNSA has elected to enter into settlement. NNSA, the Office of Enforcement, and CNS have reached agreement to resolve this matter through execution of this Consent Order.

### IV

Accordingly, the terms of this Consent Order are as follows:

In consideration of the mutual agreements set forth in this section, the sufficiency and adequacy of which are acknowledged by NNSA, the Office of Enforcement, 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 the Y-12 National Security Complex, in lieu of an enforcement action that NNSA may issue pursuant to 10 C.F.R. §§ 851.42-851.43.

1. CNS shall complete the following actions:
  - a. Fully implement the corrective actions stated in NTS report number NTS-NPO--CNS Y-12 Site-2016-0002, *Employee Fall in Utility Pit*, which are summarized below:
    - (1) Develop and finalize a site-wide corrective actions plan, and extent of conditions review.
    - (2) Enhance hazard identification and assessment requirements related to confined space entry and lockout-tagout (LOTO), as revealed by the event.

- (3) Update CNS worker safety and health (WSH) program content, and the related processes for implementation of forms/permits, to address the procedural deficiencies from the event.
  - (4) Provide initial, and periodic training as necessary, in revised WSH program content to ensure that personnel are adequately informed about required procedures and potential worksite hazards.
  - (5) Enhance hazard prevention and abatement provisions related to confined space entry and LOTO as revealed by the event. To the extent feasible, reconfigure utility pit equipment to locations outside of pits so as to preclude personnel entry into a confined space.
  - (6) Communicate the lessons-learned, as appropriate.
  - (7) Conduct an effectiveness review at the conclusion of planned corrective actions.
- b. Provide quarterly written updates on the status of corrective actions to the Office of Enforcement and NNSA.
  - c. Notify the Office of Enforcement and NNSA in writing of any corrective action that requires an extension to the due date at least 30 calendar days before the due date specified in the correction actions plan.
  - d. Notify the Office of Enforcement and NNSA upon completion of all actions specified in the Corrective Action Plan (item 1.a. above).
  - e. Provide to the Office of Enforcement and NNSA copies of the results of the final effectiveness review specified in the NTS Corrective Action list.
2. CNS shall pay the amount of \$45,000 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. § 851.42.
  3. CNS agrees to return a signed copy of this Consent Order, within one week from the date of receipt, to the address provided in item 5 below.
  4. The Effective Date of this Consent Order shall be the date upon which CNS signs this Consent Order.
  5. CNS shall remit the monetary remedy of \$45,000 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 Consent Order. Payment shall be sent by overnight carrier to:

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. This Consent Order shall constitute a full and final settlement of the potential noncompliances identified in the referenced NTS report, subject to the following: (a) CNS's payment of the monetary remedy in accordance with item 5 above; and (b) CNS's completion of all actions set forth in item 1 above to the satisfaction of NNSA and the Office of Enforcement.
7. Neither the monetary remedy nor 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 and NNSA concerning the investigation of matters covered by this Consent Order, shall be considered allowable costs 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, to the extent they are not otherwise unallowable under the Contract and comply with all applicable laws, regulations, and DOE orders, including but not limited to, 48 CFR Part 31 – Contract Cost Principles and Procedures.
8. This Consent Order does not preclude DOE from re-opening the investigation nor preclude the commencement of an enforcement action under 10 C.F.R. § 851.42 with respect to a potential noncompliance if: (a) after the Effective Date (as defined in item 4 above), NNSA or the Office of Enforcement becomes aware of any false or materially inaccurate facts or information provided by CNS; (b) there is a recurrence of worker safety and health deficiencies similar to those identified above; or (c) CNS fails to complete all actions identified in item 1 above in a timely and effective manner to prevent recurrence.
9. Any modification to this Consent Order requires the written consent of all of the signatories below.
10. CNS waives any and all rights to appeal or otherwise seek judicial or administrative review of the terms of this Consent Order. NNSA retains the right to judicially enforce the provisions of this Consent Order by all available legal means.
11. This Consent Order is issued pursuant to the authority under Section 234C of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2282c), and the implementing provisions of Part 851 governing enforcement of worker safety and health requirements at NNSA sites.

12. This Consent Order 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 Consent Order.

FOR National Nuclear Security  
Administration

FOR Consolidated Nuclear Security, LLC

Frank G. Klotz Date 4/26/2017  
Frank G. Klotz  
Administrator  
National Nuclear Security Administration

Morgan N. Smith Date 5/5/2017  
Morgan N. Smith  
President and Chief Executive Officer  
Consolidated Nuclear Security, LLC

FOR The Office of Enforcement

Steven C. Simonson Date 4/28/2017  
Steven C. Simonson  
Director  
Office of Enforcement  
Office of Enterprise Assessments