



Department of Energy

Washington, DC 20585

November 8, 2017

VIA OVERNIGHT UPS MAIL CARRIER

Mr. Stuart MacVean
President and Chief Executive Officer
Savannah River Nuclear Solutions, LLC
203 Laurens Street SW
Aiken, South Carolina 29801

WEA-2017-02

Dear Mr. MacVean:

This letter refers to the U.S. Department of Energy (DOE) Office of Enterprise Assessments' Office of Enforcement investigation into the facts and circumstances associated with retaliation by Savannah River Nuclear Solutions, LLC (SRNS) against an SRNS employee at the Savannah River Site. The investigation was initiated to determine whether the retaliation, which was affirmed by the DOE Office of Hearings and Appeals (OHA), Case Number WBR-17-0001, constituted a violation of 10 C.F.R. Part 851, *Worker Safety and Health Program* (Part 851).

OHA determined that SRNS subjected an employee to a reprisal prohibited under the *Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information Act*, Title 41 United States Code, Section 4712 (Act), and ordered relief in the form of compensation and reinstatement. Under the Act, Federal contractors such as SRNS are prohibited from retaliating against an employee based on protected disclosures to various entities or individuals, including the Government Accountability Office, Federal employees responsible for oversight of the contract, and contractor personnel responsible for investigating, discovering, or addressing misconduct. The Act protects a disclosure of information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract, a gross waste of Federal funds, an abuse of authority relating to the contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract.

In addition to the prohibitions specified in the Act, subjecting an employee to reprisal for expressing a workplace safety and health concern also constitutes a violation of Part 851. The claim by the SRNS employee and OHA's Decision and Order issued February 23, 2017 (OHA Order), identified a series of instances in which SRNS management acted inappropriately. We reviewed the reported



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instances and found that the employee concerns relate to worker safety and health provisions within the scope of Part 851, and thus the retaliatory act by SRNS constitutes a violation of Part 851. Of particular concern to DOE is the involvement of SRNS senior management, including the past SRNS President, in the retaliation. DOE highly values an environment where employees are confident that their safety concerns are taken seriously, and where acts of retaliation and retribution are not tolerated.

DOE has also concluded that SRNS management has not clearly communicated with SRNS employees about the outcome of the retaliation case and measures taken to prevent recurrence. This lack of transparency could perpetuate an environment that promotes fear of reprisal, discourages reporting unsafe work conditions, and increasing the likelihood for workplace injuries. DOE recognizes SRNS's efforts in carrying out corrective actions but also notes that those efforts are, principally, conditions of the OHA order.

Based on the Office of Enforcement's investigation and an evaluation of information provided in the OHA Order, DOE has concluded that a violation of 10 C.F.R. § 851.20 has occurred. Accordingly, DOE hereby issues the enclosed Preliminary Notice of Violation (PNOV), which proposes one Severity Level I violation with a base civil penalty of \$80,000. DOE contractors have an obligation under Part 851 to provide workers with processes to express concerns related to worker safety and health without reprisal. Through the aforementioned retaliatory act, SRNS created an environment where unsafe conditions could go unreported, including those that have the potential to cause death or serious physical harm. Therefore, acts of retaliation that suppress a worker's right to report workplace safety and health concerns are viewed by DOE as Severity Level I violations.

DOE also considered several aggravating factors, including the level of SRNS management that participated in the retaliation, the willful nature of the retaliatory acts, and the duration of the Part 851 violations. DOE determined that management's awareness of the three worker safety and health concerns, SRNS failures to follow established procedures for addressing worker safety and health concerns, and senior management's decision to terminate the employee displayed a callous disregard for SRNS's responsibility to ensure free and open workplace safety communication without reprisal. Accordingly, DOE has elected to cite each of the reported worker safety and health-related concerns as separate instances of the violation, in addition to the OHA-affirmed retaliation case. DOE therefore issues the enclosed PNOV, which cites one Severity Level I violation for four days with a total civil penalty of \$320,000.

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 30 calendar days in

accordance with 10 C.F.R. § 851.42(d), you relinquish any right to appeal any matter in the PNOV, and the PNOV, including the proposed civil penalty assessment, will constitute a final order.

After reviewing your reply to the PNOV, including any proposed additional corrective actions entered into DOE's Noncompliance Tracking System, 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,



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

Enclosure: Preliminary Notice of Violation (WEA-2017-02)

cc: Jack Craig, DOE-SR
Robert Martini, SRNS

Preliminary Notice of Violation

Savannah River Nuclear Solutions, LLC
Savannah River Site

WEA-2017-02

The U.S. Department of Energy (DOE) conducted an investigation into the facts and circumstances associated with retaliation by Savannah River Nuclear Solutions, LLC (SRNS) against an SRNS employee at the Savannah River Site. The investigation was initiated to determine whether the retaliation, which was affirmed by the DOE Office of Hearings and Appeals (OHA), Case Number WBR-17-0001, constituted a violation of 10 C.F.R. Part 851, *Worker Safety and Health Program* (Part 851). The investigation revealed a violation of DOE worker safety and health requirements by SRNS.

Pursuant to Section 234C of the Atomic Energy Act of 1954, as amended, and DOE regulations set forth in Part 851, DOE hereby issues this Preliminary Notice of Violation (PNOV) to SRNS for a violation of Part 851 requirements associated with management responsibilities and worker rights. Pursuant to 10 C.F.R. § 851.5(a), DOE is proposing to impose a civil penalty for a continuing violation, which include each of the separate worker safety and health-related concerns revealed by DOE's investigation, in addition to the act of retaliation affirmed by OHA. Therefore, the PNOV cites SRNS with one Severity Level I violation per day for four days.

Severity Levels are explained in Part 851, Appendix B, *General Statement of Enforcement Policy*. Subparagraph VI(b) 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."

As required by 10 C.F.R. § 851.42(b) and consistent with Part 851, Appendix B, the violation is listed below. If this PNOV becomes a final order, then SRNS may be required to post a copy of this PNOV in accordance with 10 C.F.R. § 851.42(e).

I. VIOLATION

A. Management responsibilities

Title 10 C.F.R. § 851.10, *General requirements*, requires that contractors "[e]nsure that work is performed in accordance with: (i) [a]ll applicable requirements of [Part 851]; and (ii) [w]ith the worker safety and health program for that workplace."

Title 10 C.F.R. § 851.20, *Management responsibilities and worker rights and responsibilities*, subsection (a), *Management responsibilities*, states that “[c]ontractors are responsible for the safety and health of their workforce and must ensure that contractor management at a covered workplace:...(6) [e]stablish procedures for workers to report without reprisal job-related fatalities, injuries, illnesses, incidents and hazards and make recommendations about appropriate ways to control those hazards[.]” In addition, subsection (b), *Worker rights and responsibilities*, states that “[w]orkers at a covered workplace have the right, without reprisal to:...(7) [e]xpress concerns related to worker safety and health[.]”

SRNS Workforce Services, *Employee Concerns Program Department Procedure*, ECP 1.01, Rev. 14 (effective November 4, 2009), outlines SRNS’ “process for administering the Employee Concerns Program (ECP) process to ensure all concerns raised directly to the SRNS Employee Concerns Program are fully processed and addressed in accordance with applicable regulations, rules, laws, policies and procedures, and management expectations.”

SRNS Workforce Services, *Employee Concerns Program Department Procedure*, Section 5.4, states that “[t]he identity of concern originator is not to be disclosed to any individual outside the ECP without the written authorization of that individual.”

Contrary to these requirements, SRNS failed to effectively implement a worker safety and health program that ensures SRNS employees can report safety and health issues without reprisal. On February 23, 2017, OHA issued a Decision and Order, which concluded that SRNS subjected an employee to reprisal prohibited under the *Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information Act*, Title 41 United States Code, Section 4712 (Act) when SRNS terminated employment of the affected employee for making disclosures protected under the Act. The reported disclosures reveal repeated attempts to suppress reporting and a failure to comply with the SRNS procedures for reporting safety and health concerns. Among the reported disclosures were the following workplace safety and health concerns, including issues of reprisal, which were evaluated by SRNS’s ECP:

1. The ECP investigated an allegation that SRNS retaliated against an employee for reporting a safety concern regarding preventive maintenance of gloveboxes. The ECP investigation substantiated the allegation; however, SRNS management failed to follow ECP procedures by intervening in and attempting to change the results of the investigation.
2. The ECP investigated an allegation that SRNS employees in a work unit would not report safety concerns because they feared reprisal, and that information was manipulated in a work package for preventive maintenance work in such a way as to minimize safety hazards. The ECP investigation substantiated the concerns and reported the results to management. SRNS senior management attempted to circumvent the ECP process by issuing a rebuttal to the investigation and identified the employee who expressed the safety and health concern, as well as other employees interviewed as part of the investigation. These practices were inconsistent with SRNS procedures for reporting and addressing safety concerns.

3. The ECP reported to SRNS senior management the results of an investigation regarding an employee concern about hazardous chemical storage. The concern identified storage practices that presented a safety hazard, materials that were improperly stored, materials that lacked proper screening, and gas cylinders that were improperly managed. Following a briefing on the matter, a SRNS senior manager sought the identity of the individual who reported the concerns.

These matters, which involved issues of reprisal, acts to circumvent established procedures for communicating safety hazards, and the retaliation case at issue, identify conduct that is severe and pervasive enough to obstruct workers' reporting of safety and health concerns, potentially including workplace hazards that could cause death or serious physical harm.

Collectively, this noncompliance constitutes a Severity Level I violation.
Base Civil Penalty – \$80,000
Proposed Civil Penalty (Escalation) – \$320,000

II. REPLY

Pursuant to 10 C.F.R. § 851.42(b)(4), SRNS 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 SRNS chooses not to contest the violation set forth in this PNOV and the proposed civil penalties, the reply should state that SRNS waives the right to contest any aspect of this PNOV, including the proposed civil penalty, and this PNOV will constitute a final order upon filing the reply. In such case, the total proposed civil penalty of \$320,000 must be remitted by check, draft, or money order payable to the Treasurer of the United States (Account 891099) and mailed to the address provided below. To remit the civil penalty by electronic funds transfer (EFT), please have your accounting department contact the Office of Enforcement's Docket Clerk at (301) 903-0107 for EFT wiring instructions.

If SRNS 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 SRNS 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), SRNS relinquishes any right to appeal any matter in this PNOV, this PNOV will constitute a final order, and the civil penalty must be remitted in accordance with the directions provided above.

Please send the appropriate reply by overnight carrier to the following address:

Director, Office of Enforcement
Attention: Office of the Docketing Clerk, EA-10
U.S. Department of Energy
19901 Germantown Road
Germantown, MD 20874-1290

A copy of the reply should also be sent to the Manager of the Savannah River Operations Office.



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

Washington, D.C.

This 8th day of November 2017