



U.S. DEPARTMENT OF
ENERGY

Fiscal Year 2019 Enforcement Activities Overview

**Report to Congress
February 2020**

**United States Department of Energy
Washington, DC 20585**

Message from the Secretary

The Department of Energy (DOE), including the National Nuclear Security Administration, is committed to the protection of national security assets and the health and safety of DOE employees and the public. DOE, as a self-regulating agency, has implemented a system of checks and balances and continuous performance monitoring to ensure that the work performed by DOE's contractors is done safely and securely. As part of this performance assurance framework, DOE is obligated by the Atomic Energy Act (AEA) to implement an enforcement program that can hold its contractors accountable for violating certain safety and security requirements. The DOE Office of Enterprise Assessments administers this enforcement program on my behalf in accordance with the AEA in the areas of nuclear safety, worker safety and health, and classified information security.

This report provides information about the DOE enforcement outcomes issued in Fiscal Year (FY) 2019, including whether any penalties were imposed, a description of such penalties, and the entities against which the penalties were imposed, as required by Public Law 115-232, the National Defense Authorization Act for FY 2019.¹

This report is being provided to the following Members of Congress:

- The Honorable Nita Lowey
Chairwoman, House Committee on Appropriations
- The Honorable Kay Granger
Ranking Member, House Committee on Appropriations
- The Honorable Adam Smith
Chairman, House Armed Services Committee
- The Honorable Mac Thornberry
Ranking Member, House Armed Services Committee

¹ The enforcement program uses a variety of mechanisms, which are discussed further in this report, to communicate with DOE contractors about regulatory and compliance issues. These mechanisms include Notices of Violation, Consent Orders, Settlement Agreements, Compliance Orders, Special Report Orders, and Enforcement Letters. Not all enforcement outcomes result in the imposition of penalties pursuant to the AEA, such as when there has been a contract fee reduction for regulatory violations. For purposes of completeness, DOE has included discussion of other enforcement activities conducted during the fiscal year.

- The Honorable Jim Cooper
Chairman, House Subcommittee on Strategic Forces
Committee on Armed Services
- The Honorable Michael Turner
Ranking Member, House Subcommittee on Strategic Forces
Committee on Armed Services
- The Honorable Frank Pallone, Jr.
Chairman, House Energy and Commerce Committee
- The Honorable Yvette Clarke
Vice-Chairman, House Energy and Commerce Committee
- The Honorable Greg Walden
Ranking Member, House Energy and Commerce Committee
- The Honorable Richard Shelby
Chairman, Senate Committee on Appropriations
- The Honorable Patrick Leahy
Vice Chairman, Senate Committee on Appropriations
- The Honorable Deb Fischer
Chairman, Senate Subcommittee on Strategic Forces
Committee on Armed Services
- The Honorable Martin Heinrich
Ranking Member, Senate Subcommittee on Strategic Forces
Committee on Armed Services
- The Honorable James Inhofe
Chairman, Senate Armed Services Committee
- The Honorable Jack Reed
Ranking Member, Senate Armed Services Committee
- The Honorable Lisa Murkowski
Chairman, Senate Energy and Natural Resources Committee
- The Honorable Joe Manchin
Ranking Member, Senate Energy and Natural Resources Committee

Should you have any questions or need additional information concerning this matter, please have your staff contact Ms. Katie Donley, Deputy Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-0176; Mr. Shawn Affolter, Deputy Assistant Secretary for Senate Affairs, or Mr. Christopher Morris, Deputy Assistant Secretary for House Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Brouillette". The signature is fluid and cursive, with a large initial "D" and "B".

Dan Brouillette

Executive Summary

The Atomic Energy Act of 1954, as amended (AEA), authorizes the Secretary of Energy to establish rules, regulations, or orders necessary or desirable to promote the common defense and security and protect health or minimize danger to life or property associated with the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), operations. The AEA also authorizes the Secretary of Energy to impose penalties on DOE contractors indemnified under the AEA for violating certain rules, regulations, or orders. Per that authority, DOE established regulations in Title 10 of the Code of Federal Regulations: Part 820, *Procedural Rules for DOE Nuclear Activities*; Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*; and Part 851, *Worker Safety and Health Program*.

DOE regulations (1) require DOE contractors to establish procedures for workers to report workplace-related safety concerns, (2) establish DOE contractor workers' right to report such concerns without reprisal, and (3) set forth provisions for DOE to take enforcement actions against contractors that retaliate against employees who express concerns related to nuclear safety or worker safety and health issues. An act of retaliation taken by a DOE contractor against an employee for expressing a worker safety and health or nuclear safety concern is considered a violation of a safety requirement and thus could result in the imposition of civil or contract penalties on the contractor.

The purpose of this report is to provide information about enforcement outcomes issued by DOE in Fiscal Year (FY) 2019 to the Congressional Appropriations Committees, the Congressional Defense Committees, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, as required by Public Law (P.L.) 115-232, the National Defense Authorization Act for FY 2019. This information includes whether any penalties were imposed, a description of such penalties, and the entities against which the penalties were imposed.

In FY 2019, DOE issued nine enforcement outcomes (three Notices of Violation (NOV) and six Enforcement Letters) to contractor organizations performing work for DOE. One NOV was issued pursuant to section 234A of the AEA, which pertains to imposing penalties for violations of DOE nuclear safety requirements. In lieu of a civil penalty, DOE imposed a substantial contract fee reduction that was levied on the contractor for the deficiencies cited in the NOV. None of the outcomes involved employee retaliation.

This report contains (1) the legislative language requiring this report; (2) a summary of the enforcement program administered by the DOE Office of Enterprise Assessments; (3) a description of the enforcement outcomes issued in FY 2019; and (4) a list of the enforcement outcome documents, which are available on the energy.gov website.



DEPARTMENT OF ENERGY
FISCAL YEAR 2019
ENFORCEMENT ACTIVITIES OVERVIEW

Table of Contents

I. Legislative Language..... 1

II. Enforcement Program 1

III. Enforcement Outcomes..... 4

IV. Enforcement Documents List..... 7

V. Summary8

I. Legislative Language

This report fulfills a requirement of section 3134 of P.L. 115-232, the National Defense Authorization Act for FY 2019, which states that:

... the Secretary shall submit to the appropriate congressional committees a notification of whether any penalties were imposed pursuant to section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a) during the year preceding the submission of the report, including a description of such penalties and the entities against which the penalties were imposed.

II. Enforcement Program

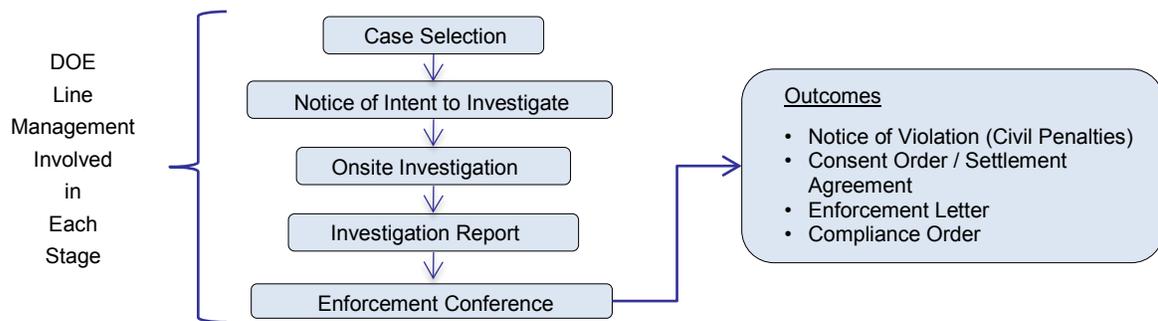
The AEA authorizes the Secretary of Energy to establish rules, regulations, or orders necessary or desirable to promote the common defense and security or to protect health or minimize danger to life or property associated with DOE, including NNSA, operations. The AEA also authorizes the Secretary to levy penalties against DOE contractors indemnified under the AEA for violations of certain rules, regulations, or orders. Per that authority, DOE established regulations in Title 10 of the Code of Federal Regulations (10 C.F.R.) to implement this enforcement authority: Part 820, *Procedural Rules for DOE Nuclear Activities*; Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*; and Part 851, *Worker Safety and Health Program*. As described in the enforcement policy statements appended to each of these regulations, “the DOE goal in the compliance arena is to enhance and protect” the common defense and security at DOE facilities and the safety and health of workers and the public “by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance” with the regulations and requirements.

The Secretary has designated the Director, Office of Enterprise Assessments (EA), to implement the investigation and enforcement provisions of 10 C.F.R. Parts 820, 824 and 851 for the Department. EA implements these functions for all non-NNSA DOE-covered contractors and individuals, and through a Memorandum of Understanding with NNSA for NNSA-covered contractors and individuals. Within EA, enforcement program responsibilities are delegated to the Director, Office of Enforcement.

To accomplish the enforcement program’s goals effectively, the Office of Enforcement works closely with DOE program and field element managers to ensure that enforcement decisions fully consider the operational context within which an event or issue occurs, the safety or security significance of any potential violations, and contractor performance trends. However, the Office of Enforcement ultimately exercises independence in applying the enforcement provisions in order to promote consistent use of the sanctions available in accordance with the enforcement policies and commensurate with the gravity of the issue at hand. Through this

approach, DOE has established an impartial and transparent process that demonstrates to Congress, the public, and the workforce that DOE contractor organizations will be held accountable for significant deviations from established regulatory requirements pertaining to safety and classified information security.

DOE has latitude and discretion in investigating noncompliance, considering mitigating and aggravating factors, and determining the appropriate outcome for an enforcement proceeding based on the relevant facts and circumstances. The Office of Enforcement maintains an Enforcement Process Overview document that provides background information, identifies roles and responsibilities, and describes the process used by EA to implement the Secretary’s enforcement authorities. The Overview is available on an EA web page² that is within the DOE website, www.energy.gov. The general enforcement process is depicted in the following graphic:



The Office of Enforcement reviews and analyzes information from a variety of sources to identify potential regulatory noncompliance. These include DOE safety and security data management systems; other DOE offices such as the Inspector General and Hearings and Appeals; internal assessment and performance reports; external organizations such as Congress and the Defense Nuclear Facilities Safety Board; and information communicated directly to the Office of Enforcement by a contractor, DOE worker, or union official. The decision to conduct an enforcement investigation is based on an evaluation of the safety and/or security significance associated with a particular potentially noncompliant condition or event. For acts of retaliation or willful noncompliance, the Office of Enforcement evaluates both the retaliation/willful aspect of a potential violation and the associated safety or security issue involved.

The enforcement regulations establish provisions for the Department to take enforcement actions against contractors that retaliate against employees for expressing concerns related to nuclear safety or worker safety and health. The Office of Enforcement monitors claims of safety-related retaliation filed with the administrative bodies that adjudicate whistleblower

² <https://www.energy.gov/ea/downloads/safety-and-security-enforcement-process-overview>

claims, including the DOE Office of Hearings and Appeals, the DOE Office of the Inspector General, the U.S. Department of Labor's (DOL) Office of Whistleblower Protection Programs, and the Federal and state judiciary system. In general, the Office of Enforcement delays acting on a retaliation matter until DOE, DOL, or the judicial body has completed its process and ruled that retaliation occurred, and after all appeals have been exhausted. The decision to initiate an enforcement proceeding for retaliation does not depend on whether the reported safety concern is affirmed by the administrative body. The act of retaliation is in itself a safety concern because it deters employees from identifying and promptly reporting safety concerns. The Office of Enforcement considers several factors when evaluating cases of alleged retaliation such as the level of contractor management involved, contractor management's adherence to employee concerns program requirements, and contractor management's response when retaliation is affirmed. The Office of Enforcement can issue a NOV and levy a civil penalty for retaliation, but it cannot order restitution for the affected employee.

Once the circumstances surrounding a noncompliance and its safety or security significance are understood and any enforcement conference and preliminary deliberations are complete, an appropriate enforcement outcome is developed. The Office of Enforcement is authorized to issue NOVs and Consent Orders/Settlement Agreements to non-NNSA contractors. The NNSA Administrator issues NOVs for its contractors. Pursuant to a Memorandum of Understanding between NNSA and EA, Consent Orders and Settlement Agreements for NNSA contractors are issued jointly by NNSA and the Office of Enforcement. Compliance Orders must be executed by the Secretary of Energy. When the facts and circumstances associated with a safety or security issue indicate that enforcement discretion is warranted, the Office of Enforcement can issue an Enforcement Letter to a DOE or NNSA contractor to draw management attention to a problem area and/or provide feedback on the contractor's response to a safety or security issue. These outcomes are described in more detail in the Enforcement Process Overview.

DOE is authorized to levy civil penalties on indemnified DOE contractors that violate the worker safety and health and nuclear safety regulations, and all DOE contractors with contract clauses invoking DOE directives on safeguarding classified or classified information security regulations. Civil penalties are imposed through the issuance of an NOV and are determined by the severity level assigned to the violation(s) based on their safety or security significance. A penalty may be escalated or mitigated by applying discretionary adjustment factors that are described in the enforcement policies. DOE imposes civil penalties to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of contractor self-identification, reporting, and correction of noncompliance.

For violations of worker safety and health requirements, DOE is authorized to reduce contract fees or other payments, with the proviso that DOE may pursue either civil penalties or a contract fee reduction, but not both, for the same violation. NOVs will identify whether a fee/payment reduction has been levied instead of a civil penalty, and typically identify the amount of any such reduction.

The nuclear safety and classified information security enforcement regulations do not specifically allow or prohibit levying both a contract fee reduction and civil penalty for the same violation. However, for consistency in the overall enforcement program, DOE considers the basis and amount of a contract fee action when determining whether a civil penalty should also be levied for an event, condition, or noncompliance that has been subject to a fee reduction.

DOE may elect to settle a noncompliance matter with a contractor if the facts and circumstances of the case do not otherwise warrant issuance of an NOV. Consent Orders and Settlement Agreements do not include a civil penalty but typically require payment of a monetary remedy. They may also require that specified corrective actions be completed.

To promote transparency and share lessons learned across the DOE complex, the Office of Enforcement posts all enforcement outcome documents on an EA page of the energy.gov website.³ In FY 2019, EA also engaged in multiple outreach activities to DOE program offices, contractor organizations, and other stakeholder groups to convey information about the Department's safety and security compliance and performance trends, and enable operating units to safely and securely execute their responsibilities in achieving DOE's missions.

III. Enforcement Outcomes

This section contains information about the nine EA enforcement outcomes (three NOVs and six Enforcement Letters) issued in FY 2019, including whether any penalties were imposed, a description of such penalties, and the entities against which the penalties were imposed. None of the outcomes involved employee retaliation. All of the Preliminary Notices of Violation (PNOV) that were issued became final NOVs because the contractors did not contest the PNOVs.

Section B provides information about the outcomes related to the nuclear safety requirements addressed in section 234A of the AEA. DOE issued one NOV pursuant to section 234A, but did not impose a civil penalty given the substantial contract fee reduction that was levied on the contractor for the deficiencies cited in the NOV.

Additional information is available on the EA pages of the energy.gov website at <https://www.energy.gov/ea/information-center/enforcement-infocenter>.

³ <https://www.energy.gov/ea/information-center/enforcement-infocenter>

A. Worker Safety and Health Enforcement

1. Enforcement Letter, Consolidated Nuclear Security, LLC

On October 15, 2018, DOE issued an Enforcement Letter (WEL-2018-01) to Consolidated Nuclear Security, LLC, the management and operating contractor for the Pantex Plant, expressing concerns about an incident in which an employee was overexposed to the hazardous chemical toluene while working in a paint shop.

The letter identifies concerns with the contractor's implementation of its industrial hygiene program relating to the overexposure due to inadequate toluene sampling and monitoring and lack of engineering controls to limit personnel exposure to the chemical.

2. Preliminary Notice of Violation, Los Alamos National Security, LLC

On December 20, 2018, DOE issued a PNOV (WEA-2018-02) to Los Alamos National Security, LLC (LANS), the former management and operating contractor for the Los Alamos National Laboratory, for violations of 10 C.F.R. Part 851 requirements associated with an event in which a worker was exposed to low oxygen conditions.

The PNOV cites one Severity Level I violation for inadequate hazard identification, assessment, prevention and abatement; and one Severity Level II violation for inadequate implementation of management responsibilities and worker training. Because NNSA factored this event into its end-of-year performance evaluation and fee awarded to LANS, no civil penalty was imposed for these violations. The PNOV became a final order as LANS did not contest the PNOV.

3. Preliminary Notice of Violation, National Technology and Engineering Solutions of Sandia, LLC

On August 6, 2019, DOE issued a PNOV (WEA-2019-01) to National Technology and Engineering Solutions of Sandia, LLC (NTESS), the management and operating contractor for Sandia National Laboratories, for violations of 10 C.F.R. Part 851 requirements associated with the contractor's implementation of its electrical safety program and three electrical safety-related events.

The PNOV cites four Severity Level I violations and one Severity Level II violation in the areas of management responsibilities, hazard identification and assessment, electrical safety, emergency response, training and information, and recordkeeping. Because NNSA withheld \$740,000 in award fee from NTESS for safety and health-related deficiencies including those associated with the events cited in the PNOV, no civil penalty was imposed for the violations. The PNOV became a final order as NTESS did not contest the PNOV.

4. Enforcement Letters, Applied Construction Technologies 2, LLC and Marto Electric, LLC

On August 13, 2019, DOE issued Enforcement Letters to Applied Construction Technologies 2, LLC (ACT2), a subcontractor to NTESS at Sandia National Laboratories; and Marto Electric, LLC, a subcontractor to ACT2. The letters relate to an electrical arc that occurred when a heavy equipment truck approached an energized overhead power line.

The letters identify concerns about the contractors not adhering to NTESS contract-specific safety plan requirements for pre-operation hazard assessment and de-energization of the power line. DOE elected to issue the Enforcement Letters rather than pursue further enforcement activity in recognition of the corrective actions taken by the contractors to address noncompliance revealed by the event.

B. Nuclear Safety Enforcement

1. Enforcement Letter, Savannah River Nuclear Solutions, LLC

On November 2, 2018, DOE issued an Enforcement Letter (NEL-2018-02) to Savannah River Nuclear Solutions, LLC (SRNS), the management and operating contractor for the Savannah River Site, to recognize positive actions taken by the contractor in response to a processing tank anomaly that resulted in a higher than anticipated quantity of plutonium being present in another tank following a solution transfer.

The letter commends SRNS for its safety inquisitiveness, prompt and thorough investigation of the issue, and rigorous corrective action implementation.

2. Enforcement Letter, Mission Support Alliance, LLC

On November 2, 2018, DOE issued an Enforcement Letter (NEL-2018-01) to Mission Support Alliance, LLC (MSA), a site services integrating contractor at the Hanford site, expressing concerns about the contractor's software quality assurance program.

The letter conveys the Office of Enforcement's concern that DOE oversight was necessary to identify that MSA had not developed and implemented a software quality assurance program for nuclear safety as required by its DOE-approved quality assurance program document and 10 C.F.R. Part 830 quality assurance provisions. The letter also expresses concerns with the extent of the corrective actions developed by MSA to address the issue.

3. Preliminary Notice of Violation, CH2M Hill Plateau Remediation Company

On April 1, 2019, DOE issued a PNOV (NEA-2019-01) to CH2M Hill Plateau Remediation Company (CHPRC), an environmental cleanup contractor at the Hanford site, for violations of 10 C.F.R. Parts 830 and 835 associated with the spread of radiological contamination

outside of established radiological control boundaries, causing unanticipated personnel exposures.

The PNOV cites three Severity Level II violations and two Severity Level III violations in the areas of contamination control, radiological monitoring, quality improvement, hazard analysis, and the unreviewed safety question process. Because DOE had already reduced CHPRC's contract award fee for the year by approximately \$1.8 million for the deficiencies associated with this event, and had reduced the contractor's fee by approximately \$1 million for a similar event the previous year, no additional civil penalty was imposed. The PNOV became a final order as CHPRC did not contest the PNOV.

C. Classified Information Security Enforcement

1. [Enforcement Letter, Savannah River Nuclear Solutions, LLC \(SRNS\)](#)

On August 20, 2019, DOE issued an Enforcement Letter (SEL-2019-01) to SRNS expressing concerns about the contractor's incidents of security concern (IOSC) program.

The letter describes numerous concerns with the SRNS IOSC program including lack of timely incident notification and closure, lack of thoroughness in inquiry reports, inadequate causal analysis and corrective action development, and lack of program formality.

IV. Enforcement Documents List

This section contains a list of enforcement documents issued in FY 2019 in chronological order by discipline. The titles listed in this section are linked to the EA public website at:

<https://www.energy.gov/ea/information-center/enforcement-infocenter>.

A. Worker Safety and Health Enforcement

1. [Enforcement Letter, Consolidated Nuclear Security, LLC](#)
2. [Preliminary Notice of Violation, Los Alamos National Security, LLC](#)
3. [Preliminary Notice of Violation, National Technology and Engineering Solutions of Sandia, LLC](#)
4. [Enforcement Letter, Applied Construction Technologies 2, LLC](#)
5. [Enforcement Letter, Marto Electric, LLC](#)

B. Nuclear Safety Enforcement

1. [Enforcement Letter, Savannah River Nuclear Solutions, LLC](#)
2. [Enforcement Letter, Mission Support Alliance, LLC](#)

3. [Preliminary Notice of Violation, CH2M Hill Plateau Remediation Company](#)

C. Classified Information Security Enforcement

1. [Enforcement Letter, Savannah River Nuclear Solutions, LLC](#)

V. Summary

In FY 2019, DOE issued nine enforcement outcomes (three NOVs and six Enforcement Letters) to contractor organizations performing work for DOE. One NOV was issued pursuant to section 234A of the AEA, which pertains to imposing penalties for violations of DOE nuclear safety requirements. DOE did not impose a civil penalty in this case given the substantial contract fee reduction that was levied on the contractor for the deficiencies cited in the NOV. None of the outcomes involved employee retaliation. The issuance of enforcement outcomes is closely collaborated with DOE line management and the DOE Office of General Counsel.