



U.S. DEPARTMENT OF  
**ENERGY**

# **Fiscal Year 2020 Enforcement Activities Overview**

**Report to Congress  
December 2020**

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

# Message from the Secretary

The Department of Energy (DOE) is committed to protecting the national security assets entrusted to DOE 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 verify that the work performed by DOE's contractors is accomplished 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, 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) 2020, 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.<sup>1</sup>

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
- **The Honorable Frank Pallone, Jr.**  
Chairman, House Energy and Commerce Committee
- **The Honorable Greg Walden**  
Ranking Member, House Energy and Commerce Committee

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<sup>1</sup> 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. For purposes of completeness, DOE has included discussion of other enforcement activities conducted during the fiscal year.

- **The Honorable Richard Shelby**  
Chairman, Senate Committee on Appropriations
- **The Honorable Patrick Leahy**  
Vice Chairman, Senate Committee on Appropriations
- **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. Katherine 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,



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 or to protect health or minimize danger to life or property associated with Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), operations. The AEA also authorizes the Secretary of Energy to impose civil monetary penalties on DOE contractors indemnified under the AEA for violating certain rules, regulations, or orders. DOE has established the following regulations in Title 10 of the Code of Federal Regulations 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*.

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 action against contractors that retaliate against employees who express concerns related to nuclear safety or worker safety and health. 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 DOE can impose a civil or contract penalty on the contractor for such violations.

Section 3134 of Public Law (P.L.) 115-232, the National Defense Authorization Act for Fiscal Year (FY) 2019, requires the Secretary to notify Congress regarding whether any penalties were imposed pursuant to section 234A of the AEA (42 U.S.C. 2282a) during the preceding year, including a description of such penalties and the entities against which the penalties were imposed. In accordance with this requirement, this report is being provided to 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.

In FY 2020, DOE issued six enforcement outcomes to contractor organizations performing work for DOE, which consisted of one Notice of Violation (NOV), one Consent Order, and four Enforcement Letters. The NOV was issued pursuant to section 234A of the AEA, which pertains to the imposition of penalties for violations of DOE nuclear safety requirements. In lieu of a civil penalty, a substantial contract fee reduction 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 2020; and (4) a list of FY 2020 enforcement outcome documents, which are available on DOE's website.



# DEPARTMENT OF ENERGY

## FISCAL YEAR 2020

### ENFORCEMENT ACTIVITIES OVERVIEW

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## 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:

Not later than February 1, 2019, and annually thereafter through 2021, 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

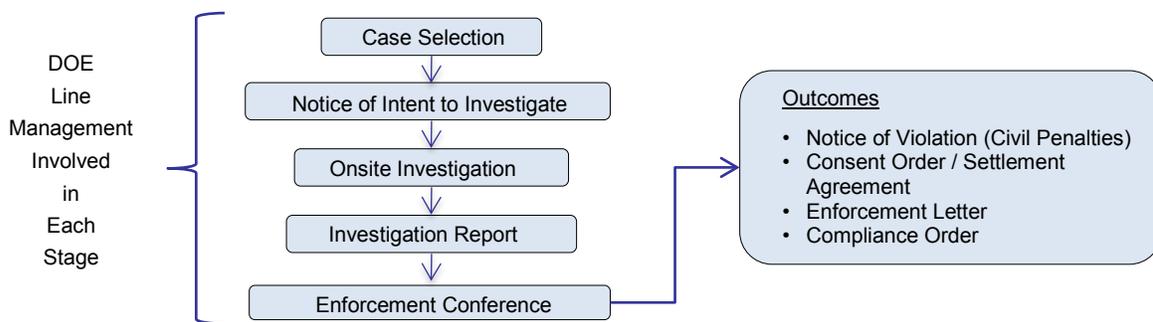
The AEA authorizes the Secretary of Energy to establish rules, regulations, or orders necessary or desirable to promote the common defense and security or to protect health or minimize danger to life or property associated with DOE, including NNSA, operations. The AEA also authorizes the Secretary to levy civil monetary penalties against DOE contractors indemnified under the AEA for violations of certain rules, regulations, or orders. DOE has established the following 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, including the security of classified information (Part 824), safety and health of workers (Part 851), and nuclear safety for the public and workers (Part 820), “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 contractors and individuals. Through a Memorandum of Understanding (MOU) with NNSA, EA performs investigations of NNSA-covered contractors and individuals and makes recommendations to the NNSA Administrator on proposed enforcement outcomes. 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 regulatory 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 violations 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 violations of regulatory requirements pertaining to safety and classified information security.

The enforcement regulations provide the Director of Enforcement latitude and discretion in investigating noncompliances, 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 DOE's website.<sup>2</sup> 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 noncompliances. These include DOE safety and security data management systems; other DOE offices such as the Office of Inspector General and the Office of 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 contractor employees, DOE workers, or union officials. The decision to conduct an enforcement investigation is based on an evaluation of the safety or security significance associated with a particular potentially noncompliant condition or event. For acts of retaliation or willful noncompliances, the Office of Enforcement evaluates both the retaliatory or willful aspect of a potential violation and the associated safety or security issue involved.

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

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 claims, including the DOE Office of Hearings and Appeals, the DOE Office of 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 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 retaliation cases, 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 alleged. The Office of Enforcement may issue a Notice of Violation (NOV) and impose a civil penalty on a contractor for retaliation, but it may not 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, the Office of Enforcement prepares an appropriate enforcement outcome document. The Office of Enforcement is authorized to issue NOVs, Consent Orders, and Settlement Agreements to non-NNSA contractors. The NNSA Administrator issues NOVs for its contractors. Pursuant to the MOU 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 impose civil penalties on indemnified DOE contractors that violate DOE's worker safety and health or nuclear safety regulations, and all DOE contractors with contract clauses invoking DOE directives on safeguarding classified information or that violate DOE's classified information security regulations. Civil penalties are imposed through the issuance of an NOV and are determined by statutory limits and the severity level assigned to the violation(s) based on 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 noncompliances.

For violations of worker safety and health requirements, DOE is authorized to reduce contract fees or other payments, provided 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 permit 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 imposed for an event, condition, or violation that has been subject to a fee reduction in these areas.

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 may require payment of a monetary remedy. These orders and agreements 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 DOE's website.<sup>3</sup> In FY 2020, EA also engaged in multiple outreach activities to DOE program and field offices, contractor organizations, and other internal and external 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 six enforcement outcomes issued in FY 2020, 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.

Section A provides information about the enforcement action taken for violations of DOE nuclear safety requirements pursuant to section 234A of the AEA. The Preliminary Notice of Violation (PNOV) that was issued became a final NOV because the contractor did not contest the PNOV. No civil penalty was imposed due to partial mitigation of the proposed penalty for the contractor's planned corrective actions and the substantial contract fee reduction levied on the contractor for the deficiencies cited in the NOV. There was also one Enforcement Letter related to nuclear safety issued in FY 2020.

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

Sections B and C provide information about FY 2020 enforcement activities pertaining to contractor compliance with worker safety and health and classified information security requirements. Additional information is available at <https://www.energy.gov/ea/information-center/enforcement-infocenter>.

## **A. Nuclear Safety Enforcement**

### 1. [Preliminary Notice of Violation, Consolidated Nuclear Security, LLC](#)

On April 6, 2020, NNSA issued a Preliminary Notice of Violation (PNOV) to Consolidated Nuclear Security, LLC (CNS), the management and operating contractor for the Y-12 National Security Complex, for violations of 10 C.F.R. Part 830 associated with nuclear criticality controls for accumulations of fissile material.

The PNOV cites twelve Severity Level II violations and one Severity Level III violation for deficiencies in implementing the inadvertent accumulation prevention program, complying with procedures, evaluating process changes, establishing roles and responsibilities, and performing root cause analyses. Because NNSA withheld approximately \$800,000 in contract fee from CNS for criticality safety deficiencies and mitigation of the proposed penalty for corrective actions, no civil penalty was imposed for the violations. The PNOV became a final order as CNS did not contest the PNOV.

### 2. [Enforcement Letter, Triad National Security, LLC](#)

On September 25, 2020, DOE issued an Enforcement Letter (NEL-2020-01) to Triad National Security, LLC, the management and operating contractor for the Los Alamos National Laboratory, expressing concerns about two incidents involving inadequate implementation of nuclear criticality safety program elements.

The letter identifies concerns with the work processes employed during fissionable material operations and the training provided to operators working with fissionable materials. The letter also acknowledges the thoroughness of the contractor's response to the incidents and commitment to improving its nuclear safety culture.

## **B. Worker Safety and Health Enforcement**

### 1. [Enforcement Letter, Alliance for Sustainable Energy, LLC](#)

On January 22, 2020, DOE issued an Enforcement Letter (WEL-2020-01) to the Alliance for Sustainable Energy, LLC, the management and operating contractor for DOE's National Renewable Energy Laboratory, expressing concerns about two events in which researchers received an electrical shock from degraded laboratory equipment.

The letter identifies concerns with the contractor's ability to identify and assess potential electrical hazards associated with self-constructed and commercial laboratory equipment, and effectively communicate to employees the need to seek immediate medical attention after experiencing an electrical shock.

2. [Enforcement Letter, Nuclear Waste Partnership, LLC](#)

On March 4, 2020, DOE issued an Enforcement Letter (WEL-2020-02) to Nuclear Waste Partnership, LLC, the management and operating contractor for DOE's Waste Isolation Pilot Plant, expressing concerns about an event in which a backhoe being operated by a construction subcontractor rolled onto its side while transporting more than 2,000 pounds of material.

The letter identifies concerns with the contractor's oversight of subcontractor work activities, implementation of worker safety and health program requirements for identifying hazards and establishing effective hazard controls, and extent of the evaluation of the incident.

3. [Enforcement Letter, Battelle Energy Alliance, LLC](#)

On March 27, 2020, DOE issued an Enforcement Letter (WEL-2020-03) to Battelle Energy Alliance, LLC, the management and operating contractor for DOE's Idaho National Laboratory, expressing concerns about a series of reactor control room electrical relay failure events and subsequent emergency response activities.

The letter identifies concerns with the contractor's corrective actions following a 2017 electrical relay failure that were inadequate to prevent relay failures in 2018 and 2019. One of these events caused a fire that resulted in employee exposures to Halon and hazardous Halon decomposition products. The letter also identifies concerns with the emergency actions taken in response to these events.

4. [Consent Order, Nuclear Waste Partnership, LLC](#)

On September 4, 2020, DOE issued a Consent Order (WCO-2020-01) to Nuclear Waste Partnership, LLC, relating to a series of worker exposures in 2018 to hazardous chemicals and conditions at the Waste Isolation Pilot Plant.

The Consent Order describes two heat stress incidents and three chemical overexposure events affecting employees, as well as elevated levels of a hazardous pollutant in the air. The Consent Order also outlines actions taken by the contractor in response to these events to address deficiencies in identifying, assessing, and abating hazards, and providing timely and accurate sampling results. DOE elected to settle these matters with the contractor based on the contractor's self-identification of industrial hygiene program weaknesses, efforts to improve its industrial hygiene work practices and policies, and extensive

corrective actions. No monetary remedy was imposed by the Consent Order because DOE had already reduced contractor's fee by \$100,000 for the potential regulatory noncompliances associated with these events.

### **C. Classified Information Security Enforcement**

No classified information security enforcement outcomes were issued in FY 2020. An investigation into one classified information security issue has been completed and other issues are being evaluated for possible enforcement investigation.

## **IV. Enforcement Documents List**

This section contains a list of enforcement documents issued in FY 2020 in chronological order for each enforcement area. The documents listed in this section are available on DOE's website at <https://www.energy.gov/ea/information-center/enforcement-infocenter> along with all prior year enforcement outcome documents.

### **A. Nuclear Safety Enforcement**

1. [Preliminary Notice of Violation, Consolidated Nuclear Security, LLC](#)
2. [Enforcement Letter, Triad National Security, LLC](#)

### **B. Worker Safety and Health Enforcement**

1. [Enforcement Letter, Alliance for Sustainable Energy, LLC](#)
2. [Enforcement Letter, Nuclear Waste Partnership, LLC](#)
3. [Enforcement Letter, Battelle Energy Alliance, LLC](#)
4. [Consent Order Nuclear Waste Partnership, LLC](#)

## **V. Summary**

In FY 2020, DOE issued six enforcement outcomes to contractor organizations performing work for DOE, which consisted of one NOV, one Consent Order, and four Enforcement Letters. The NOV was issued pursuant to section 234A of the AEA, which pertains to the imposition of penalties for violations of DOE nuclear safety requirements. No civil penalty was imposed by the NOV due to partial mitigation of the proposed penalty for the contractor's planned corrective actions and the substantial contract fee reduction levied on the contractor for the deficiencies cited in the NOV. None of the outcomes involved employee retaliation.