



Department of Energy

Washington, DC 20585

February 7, 2018

VIA OVERNIGHT UPS MAIL CARRIER

Mr. Bruce Covert
President and Project Manager
Nuclear Waste Partnership, LLC
4021 National Parks Highway
Carlsbad, New Mexico 88220

WCO-2018-01

Dear Mr. Covert:

The Office of Enterprise Assessments' Office of Enforcement has completed its investigation into the facts and circumstances associated with the electrical shock event that occurred on February 12, 2017, at the Waste Isolation Pilot Plant. Nuclear Waste Partnership, LLC (NWP) reported this event into the Department of Energy's (DOE) Noncompliance Tracking System (NTS) under report NTS-EM-CBFO-NWP-WIPP-2017-0005464, *Electrical Safety Program - Weakness implementing electrical distribution safety requirements* on October 12, 2017.

On February 12, 2017, an electrical worker received an electrical shock while installing a ground cluster to the ground bus of a 13.8 kilovolt transformer. The electrical worker was evaluated by medical personnel and later released for full duty. The investigation revealed deficiencies in NWP's implementation of safety requirements for power transmission and distributions systems, including lack of qualification for work on high voltage equipment, and inadequate maintenance and testing of electrical protective devices.

In accordance with 10 C.F.R. § 851.41, *Settlement*, the Office of Enforcement has 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, DOE placed considerable weight on NWP's response to the event, efforts to improve electrical safety work practices, awareness of the electrical program potential noncompliances and weaknesses that underlie the event, and coordination with bargaining unit representatives to address safety concerns. National Fire Protection Association (NFPA) training on NFPA 70E, *Standard for Electrical Safety in the Workplace* was provided to staff and significant efforts were made by NWP to improve electrical distribution system work planning and control to prevent reoccurrence.



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DOE reserves the right to re-open this investigation if DOE later becomes aware that NWP 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 NWP subsequently determines to be necessary) to prevent recurrence of the identified issues, then the Office of Enforcement may pursue additional enforcement activity. The Office of Enforcement, the Office of Environmental Management, and the Carlsbad Field Office will continue to closely monitor NWP'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 me at 301-903-7707, or your staff may contact Dr. Anthony Pierpoint, Director, Office of Worker Safety and Health Enforcement, at 301-903-0100.

Sincerely,



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

Enclosure: Consent Order (WCO-2018-01)

cc: Todd Shrader, CBFO
Michael Hendrickson, NWP

On June 23, 2017, the DOE Office of Enforcement notified NWP of its decision to investigate the facts and circumstances associated with potential deficiencies related to the electrical shock event. DOE's onsite investigation was conducted from August 28 through 30, 2017.

In an October 12, 2017, letter to the Office of Enforcement, NWP requested a Consent Order to settle this matter under investigation.

III

Pursuant to 10 C.F.R. § 851.41, at any time during enforcement proceedings, DOE may resolve any or all outstanding issues with a Consent Order if the settlement is consistent with the objectives of the Atomic Energy Act of 1954, as amended, and worker safety and health requirements enforceable under 10 C.F.R. Part 851, *Worker Safety and Health Program*.

To resolve potential noncompliances of worker safety and health requirements and in consideration of NWP's fact finding investigation, apparent cause analysis, and associated corrective actions, DOE has elected to enter into settlement. DOE and NWP 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 DOE and NWP (hereinafter the "Parties"), the following terms represent agreement by the authorized representatives of the Parties to resolve by settlement the potential noncompliances at WIPP, in lieu of an enforcement action that DOE may issue pursuant to 10 C.F.R. § 851.42.

1. NWP shall:

- a. Fully implement each of the measures described in the document entitled: *13.8kV Transformer Electric Shock Corrective Action Plan (Corrective Action Plan)* dated October 27, 2017, by the due dates specified for each corrective action. Changes to the Corrective Action Plan must be approved by CBFO and communicated in writing to the Office of Enforcement. The corrective actions require that NWP fully implement the requirements specified in 29 C.F.R. § 1910.269, *Electric Power Generation, Transmission, and Distribution*, revise the NWP electrical safety manual and training program for electrical workers, and make improvements to the NWP work planning and control program to ensure adequate review and authorization of electrical work.
- b. Provide quarterly written updates on the status of corrective actions to the Office of Enforcement and CBFO.

- c. Notify the Office of Enforcement and CBFO upon completion of all actions specified in the Corrective Action Plan (item 1.a. above).
 - d. Provide to Office of Enforcement and CBFO copies of the results of the effectiveness review identified in the Corrective Action Plan by the due date listed in the Corrective Action Plan.
2. NWP shall pay the amount of \$100,000 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. NWP agrees to return a signed copy of this Consent Order, within one week from the date of receipt, to the below address:


Director, Office of Enforcement
Attention: Office of the Docketing Clerk, EA-10
U.S. Department of Energy
19901 Germantown Road
Germantown, Maryland 20874-1290
4. The Effective Date of this Consent Order shall be the date upon which NWP signs this Consent Order.
5. NWP shall remit the monetary remedy of \$100,000 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 the address identified in item 3 above. To remit the monetary remedy 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. This Consent Order will constitute a final order upon the filing of the reply.
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) NWP's payment of the monetary remedy in accordance with item 5 above; and (b) NWP's completion of all actions set forth in item 1 above to the satisfaction of CBFO and the Office of Enforcement.
7. NWP agrees that the monetary remedy or any costs, as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, incurred by, for, or on behalf of NWP relating to coordination and cooperation with DOE concerning the investigation of matters covered by this Consent Order are not allowable under the Contract. However, costs incurred by, for, or on behalf of NWP 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 at the discretion of the Contracting Officer in accordance with applicable law.

8. This Consent Order does not preclude DOE from re-opening the investigation or issuing 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), DOE becomes aware of any false or materially inaccurate facts or information provided by NWP; (b) there is a recurrence of worker safety and health deficiencies similar to those identified above; or (c) NWP 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 both Parties.
10. NWP waives any and all rights to appeal or otherwise seek judicial or administrative review of the terms of this Consent Order. DOE 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 DOE's 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 DOE sites.
12. This Consent Order shall become a Final Order after the signed copy, referenced in item 4 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 U.S. Department of Energy

FOR Nuclear Waste Partnership, LLC


Date 2/7/18
Kevin L. Dressman
Acting Director
Office of Enforcement
Office of Enterprise Assessments


Date 2/15/18
Bruce C. Covert
President and Project Manager
Nuclear Waste Partnership, LLC