



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



January 28, 2016

VIA OVERNIGHT MAIL CARRIER

Mr. David J. Richardson
President and General Manager
Babcock & Wilcox Technical Services, Y-12, LLC
11525 North Community House Road, Suite 600
Charlotte, North Carolina 28277

SEA-2015-03

Dear Mr. Richardson:

This letter refers to the U.S. Department of Energy (DOE) investigation into the facts and circumstances associated with an incident of security concern regarding the unauthorized handling and disposition of classified matter at the DOE's National Nuclear Security Administration (NNSA) Y-12 National Security Complex. The Office of Enterprise Assessments' Office of Enforcement provided the results of the investigation to Babcock and Wilcox Technical Services Y-12, LLC (B&W Y-12) in an investigation report entitled, *Unauthorized Handling and Disposition of Classified Information: Y-12 National Security Complex, Babcock & Wilcox Technical Services Y-12, LLC*, dated February 13, 2015. An enforcement conference was convened on April 9, 2015, with you and members of your staff to discuss the report's findings. A summary of the enforcement conference and list of attendees is enclosed.

Based on the evaluation of the evidence in this matter, including information collected during DOE's onsite investigation and presented at the enforcement conference, NNSA concludes that B&W Y-12 violated multiple requirements enforceable under 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*. Accordingly, NNSA hereby issues the enclosed Preliminary Notice of Violation (PNOV), which cites one Severity Level I violation, and two Severity Level II violations with a total proposed base civil penalty, before mitigation, of \$240,000.

NNSA examined the potential application of mitigating factors and determined that no mitigation would be applied for identification and reporting due to the longstanding nature of these classified information security noncompliances. However, partial mitigation was merited for B&W Y-12's immediate response to the security event and initial corrective actions that addressed concerns about the unclassified waste stream.



NNSA further notes deficiencies in B&W Y-12's information security program were identified in the fiscal year 2014 performance evaluation report, including issues that arose over the control of classified information, and NNSA correspondingly reduced the contract fee awarded to B&W Y-12. In consideration of these adverse contract actions, NNSA proposes no civil penalty for violations cited in this PNOV.

Pursuant to 10 C.F.R. § 824.6, *Preliminary Notice of Violation*, paragraph (a)(4), you have the right to file a written reply within 30 calendar days of receipt of the enclosed PNOV. Your reply must contain a statement of all relevant facts pertaining to each alleged violation and must otherwise follow the requirements of 10 C.F.R. § 824.6(b). If you fail to exercise this option to submit a reply within the 30 calendar days, then in accordance with 10 C.F.R. § 824.6(c), 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.

Sincerely,



Frank G. Klotz

Enclosures: Preliminary Notice of Violation (SEA-2015-03)
Enforcement Conference Summary and List of Attendees

cc: Geoffrey Beausoleil, NPO
Terry Chalker, B&W Y-12

Preliminary Notice of Violation

Babcock & Wilcox Technical Services Y-12, LLC
Y-12 National Security Complex

SEA-2015-03

A U.S. Department of Energy (DOE) investigation into the facts and circumstances associated with an incident of security concern (IOSC) regarding the unauthorized handling and disposition of classified information that was discovered in June 2014 (hereinafter referred to as the security event), revealed multiple violations of DOE classified information security requirements. Babcock & Wilcox Technical Services Y-12, LLC (B&W Y-12) was the management and operating contractor for the DOE National Nuclear Security Administration (NNSA) at the Y-12 National Security Complex (Y-12).¹

Following the investigation, DOE issued an investigation report entitled, *Unauthorized Handling and Disposition of Classified Information: Y-12 National Security Complex, Babcock & Wilcox Technical Services Y-12, LLC* (hereinafter referred to as the DOE investigation report) to B&W Y-12 on February 13, 2015.² On April 9, 2015, DOE convened an enforcement conference with B&W Y-12 representatives at the Babcock & Wilcox Technical Services Group corporate office in Oak Ridge, Tennessee to discuss the findings of the DOE investigation report.³

In June 2014, a B&W Y-12 employee identified a work-related paper containing Secret/Restricted Data (S/RD) markings in an unclassified waste bag that had been processed out of a facility's material access area (hereinafter referred to as the security event location).⁴ The waste bag contained approximately 19 additional work-related papers that were either marked as classified or appeared to contain classified information but had no classification markings.⁵ B&W Y-12 conducted an extent-of-condition (EOC) review, which revealed additional unclassified waste bags at the security event location that contained similar classified information.⁶ As a result of the EOC findings, 2 of 12 additional shipping containers that had previously been filled and staged for transport through the B&W Y-12 unclassified waste profile

¹ Management and Operating Contract for the Y-12 National Security Complex National Nuclear Security Administration, Contract No. DE-AC05-00OR22800, awarded August 31, 2000 (B&W Y-12 Contract). The B&W Y-12 Contract subsequently has been modified and the contractor period of performance expired June 30, 2014. As of July 1, 2014, Consolidated Nuclear Security, LLC, (CNS) was the new management and operating contractor at the Y-12 National Security Complex.

² The DOE investigation report sets forth the findings that underlie the violations presented in this Preliminary Notice of Violation.

³ A summary of the enforcement conference is enclosed with the transmittal letter to this preliminary notice of violation (Enforcement Conference Summary). During the enforcement conference, the former B&W Y-12 President stated that B&W Y-12 disagrees with the conclusions and representations in the DOE investigation report.

⁴ Letter from Morgan N. Smith, Chief Operating Officer, CNS, to Jill Y. Albaugh, Contracting Officer, NNSA Production Office (NPO), dated July 7, 2014 (responding to a letter from the NPO Contracting Officer, *Waste Stream Issue*, dated June 30, 2014) (hereinafter CNS Response), at 1.

⁵ *Id.*

⁶ *Id.* at 2.

were searched for classified information.⁷ Additional classified information was found in both containers.⁸ B&W Y-12 then decided not to search any additional containers because they were, given the prior results, presumed likely to contain additional classified information and further searches would add to the cost and potential safety concerns associated with low-level waste.⁹

Violations committed by B&W Y-12 include a failure to: (A) correctly identify, obtain the requisite classification review of, and appropriately mark classified information; (B) protect and control classified information; and (C) implement a comprehensive internal self-assessment process that ensures compliance with classified information security requirements.

Pursuant to section 234B of the Atomic Energy Act of 1954, and DOE regulations set forth at 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*, NNSA hereby issues this Preliminary Notice of Violation (PNOV) to B&W Y-12. NNSA proposes civil penalties for one Severity Level I violation of requirements set forth in 10 C.F.R. Part 1045, *Nuclear Classification and Declassification* (2014); DOE Order 475.2A, *Identifying Classified Information* (February 1, 2011); and DOE Order 471.6, Chg. 1, *Information Security* (November 23, 2012), as well as two Severity Level II violations of requirements set forth in DOE Order 471.6, Chg. 1, *Information Security* (November 23, 2012); and DOE Order 470.4B, *Safeguards and Security Program* (July 21, 2011).¹⁰

NNSA examined the potential application of mitigating factors and found merit for some mitigation based on initial corrective actions that immediately addressed concerns about the unclassified waste stream. NNSA also considered information from the fiscal year 2014 B&W Y-12 performance evaluation report. NNSA reduced the contract fee that was awarded to B&W Y-12 in this fiscal year as a result of numerous safeguards and security issues, including deficiencies in B&W Y-12's information security program. In consideration of these adverse contract actions taken by NNSA against B&W Y-12, NNSA proposes no civil penalty for violations cited in this PNOV.

Severity Level I violations are defined in 10 C.F.R. Part 824, Appendix A, *General Statement of Enforcement Policy*, paragraph V.b. as "violations [that are] reserved for classified information security requirements which involve the actual or high potential for adverse impact on the national security." Severity Level II violations are defined as "violations [that] represent a significant lack of attention or carelessness toward responsibilities of DOE contractors for the protection of classified information which could, if uncorrected, potentially lead to an adverse impact on the national security."

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 3.

¹⁰ 10 C.F.R. Part 1045 and DOE Orders are applicable to B&W Y-12 pursuant to the B&W Y-12 Contract, Part III – Section J, Clause I.123 – DEAR 970.5204-2, Laws, Regulations and DOE Directives (DEC 2000), Attachment E, List of Applicable Directives. Part 1045 and applicable DOE Orders were incorporated into Attachment E at the time of the security event; B&W Y-12's contractor period of performance expired June 30, 2014, prior to the date of issuance of this PNOV.

As required by 10 C.F.R. § 824.6 and consistent with Part 824, Appendix A, the violations are listed below.

I. VIOLATIONS

A. Failure to correctly identify, obtain the requisite classification review of, and appropriately mark classified information

Title 10 C.F.R. Part 1045, Subpart B, *Identification of Restricted Data and Formerly Restricted Data Information*, section 1045.14(a)(1), *Process for classification and declassification of restricted data and formerly restricted data information*, states that “[a]ny authorized holder who believes he or she has information which may be RD shall submit it to an RD classifier for evaluation.”

DOE Order 475.2A, Attachment 1, *Contractor Requirements Document*, paragraph 1.b, states that “[c]lassified information contained in documents or material must be correctly identified and appropriate classifier markings must be placed on the documents or material.”

Attachment 4, *Classification/Declassification Review Requirements*, paragraph 1, states that “[d]ocuments or material potentially containing classified information must be reviewed for classification to ensure that such information is identified for protection.” Subparagraph a. states the following:

a. Required Classification Reviews.

- (1) Newly generated documents or material in a classified subject area that potentially contain classified information must receive a classification review by a Derivative Classifier.
- (2) Existing unmarked documents or material that an employee believes may contain classified information must receive a classification review by a Derivative Classifier.
- (3) Existing marked documents or material that an employee believes may contain information classified at a higher level or more restrictive category must receive a classification review by a Derivative Classifier.” Subparagraph e. states that “[c]lassification determinations must take into account the potential for classification by association or compilation.

DOE Order 471.6, Chg. 1, paragraph 4.b., states that “[h]andling and protection procedures must be established, documented, and adhered to for classified information throughout its lifecycle (which includes origination, classification, marking, accountability, in-use, storage, reproduction, transmission, and destruction).” Subparagraph (1)(b) states that “[t]he originator must ensure that a derivative or original classifier reviews the information and determines its classification including: 1 When unsure of the classification level or category of a draft or working paper, and 2 For all final products that may contain classified

information.” Subparagraph (1)(c) states that “[t]he originator must ensure that all classified matter is appropriately marked according to the classification determination.”

Contrary to the above requirements, based on the following facts, B&W Y-12 did not correctly identify classified information, ensure that information in a classified subject area was reviewed for classification, and appropriately mark classified information.

1. The DOE investigation determined that information associated with the security event was in a classified subject area.¹¹ A large volume of this information is work-related paper generated from a variety of sources throughout the security event location as part of normal business activities, some of which is used for a very short period of time (i.e., generally a matter of days or less).¹² Some of this information may be unmarked or pre-marked as classified (regardless of classification level), or may become classified when notes are added or when compiled or associated with previously unclassified information.¹³ The DOE investigation found that no B&W Y-12 organization had conducted a comprehensive review to determine the classification of the work-related paper generated from daily operations.¹⁴
2. The DOE investigation found that many workers at the security event location who are required to handle and process work-related information through final disposition (i.e., throwing in the trash or shredding) are not derivative classifiers and thus are not trained or authorized to make classification determinations. Although these workers are required to be trained on the fundamental security requirements for classified matter protection and control (CMPC), including the requirement to obtain a classification review for information in a classified subject area, some classified work-related papers found in the unclassified waste stream that were identified as a result of the security event had not been reviewed by a derivative classifier or appropriately marked.¹⁵
3. Based on interviews, the DOE investigation identified some confusion about which work-related information generated as part of daily operations was classified or what combination of unclassified information could create classified work-related papers.¹⁶ This confusion was evident in the varying types of classified information found in the unclassified waste stream (i.e., both marked and unmarked). Except for three clearly marked S/RD file folders, other classified work-related papers identified as a result of the security event: (1) were marked at a higher or lower classification level than the information warranted; (2) were clearly marked as classified, but did not contain classified information; or (3) contained classified information, but were not marked as classified.¹⁷ B&W Y-12’s failure to appropriately identify classified information, obtain

¹¹ DOE investigation report, at 3.

¹² *Id.* at 3-4.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ B&W Y-12, *Manual for the Protection and Control of Classified Matter*, Y-19-203, Chapter 2, General CMPC Program Requirements, dated October 16, 2012, at 2.

¹⁶ DOE investigation report, at 4.

¹⁷ *Id.* at 2.

requisite classification reviews, and appropriately mark information in a classified subject area contributed to classified information being disposed of by unauthorized means.

Collectively, these noncompliances constitute a Severity Level I violation.

Base Civil Penalty - \$120,000¹⁸

Proposed Civil Penalty (as adjusted) - \$0

B. Failure to protect and control classified information

DOE Order 471.6, Chg. 1, paragraph 4.a.(4), states that “[a]uthorized access to classified information requires appropriate clearance, relevant access approval, and need to know.” Subparagraph a.(5) states that “[a]ll classified information must be protected from unauthorized access.” Subparagraph a.(6) states that “[m]ethods to deter, detect, respond to, and mitigate unauthorized access to classified information must be implemented.” Subparagraph a.(7) states that “[a]ll classified information, including but not limited to that which is generated, received, transmitted, used, stored, reproduced, or permanently placed (buried according to the requirements of this Order) — until it is destroyed or otherwise no longer classified — must be protected and controlled commensurate with its classification level, category, and caveats (if applicable). . . .”

Paragraph 4.b states that “[h]andling and protection procedures must be established, documented, and adhered to for classified information throughout its lifecycle (which includes origination, classification, marking, accountability, in-use, storage, reproduction, transmission, and destruction).” Subparagraph (4)(a) states that “[w]hen not in approved storage, all classified information must be under the direct control of an individual who meets the requirements for authorized access to the information.” Subparagraph (5)(a) states that “[c]lassified matter must be stored under conditions designed to deter and detect unauthorized access to the matter, to include securing it in approved equipment or facilities whenever it is not under the direct control of an authorized person.” Subparagraph (5)(d)2 states that “[s]torage containers used for storing classified matter must conform to U.S. General Services Administration standards and specifications.” Subparagraph (7)(a) states that “[p]rocedures for the transmission and receipt of classified matter must be established to deter, detect, and respond to unauthorized access to the matter. . . .” Subparagraph (7)(a)3 states that “[r]eceipts must be used to manage and verify timely delivery of matter classified Secret or higher.” Subparagraph (8)(a) states that “[f]or destruction, classified matter must be destroyed beyond recognition and must not permit subsequent recovery of classified information.”

Contrary to the above requirements, based on the following facts, B&W Y-12 did not appropriately protect and control classified information.

¹⁸ 10 C.F.R. Part 824 was amended in 2014 to reflect that effective February 3, 2014, the maximum civil penalty per violation for Base Civil Penalty for Severity Level I violations was \$120,000: 79 Fed. Reg. 1 (January 2, 2014). This rule adjusted DOE’s civil monetary penalties for inflation as mandated by the Debt Collection Improvement Act of 1996. This 2014 change will be applied to the proposed Base Civil Penalties for B&W Y-12 because the security event was discovered in June 2014.

1. The DOE investigation determined that workers at the security event location had general knowledge of classified destruction methods (i.e., approved classified shredding and approved classified waste stream), and those methods were generally used for clearly marked classified documents and file folders containing derivative classifier annotations. However, some workers disposed of work-related papers through the unclassified waste stream that were later determined to be (1) papers pre-marked as classified, which may or may not actually contain classified information; and (2) unmarked papers in which handwritten notes or other annotations caused the information to become classified through compilation.¹⁹ Some workers indicated that this process for discarding work-related paper had always been in place (i.e., for over 20 years) until discovery of the security event.²⁰ It was also believed by some workers that all waste, with the exception of sanitary waste, leaving the security event location was “buried and guarded” (i.e., buried in a locally approved location for classified matter).²¹ These workers were evidently not aware that in 2005, B&W Y-12 changed its waste profile and began shipping Y-12’s unclassified waste to an offsite burial ground that is not approved for permanent burial of classified information.²²
2. Based on interviews and document reviews, the DOE investigation determined that unclassified waste bags removed from the security event location are placed in larger containers (approximately 90 cubic feet in volume) that, when full, are sealed and have a tamper-indicating device (TID) applied.²³ These containers may remain outside the building but within the Protected Area (PA), or they may be transported and stored outside at the shipping yard, which is not within the PA.²⁴ For unclassified shipments, containers may be loaded on an open or closed conveyance.²⁵ Only one unlicensed driver is required to transport unclassified shipments to the offsite burial location.²⁶ No shipment-specific security plan has been developed.²⁷ The driver follows applicable provisions of the general transportation security plan, which provides basic guidelines for safety and security.²⁸ While en route, the driver is not required to provide a status report (except for anomalies).²⁹ The driver may stop for overnight rest breaks, during which the truck may be left unattended.³⁰ On arrival at the destination, shipping paperwork is verified and shipments are directed to a designated unclassified burial pit.³¹ Based on interviews with representatives at the receiving burial location, the DOE investigation confirmed that TIDs applied to containers by the shipping organization (i.e., B&W Y-12)

¹⁹ DOE Investigation Report, at 4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

are not verified,³² so B&W Y-12 would not know whether any TIDs had been tampered with or missing.³³

The DOE investigation found that B&W Y-12 began shipping unclassified waste from the security event location to an offsite burial location in 2005.³⁴ The shipping containers for unclassified waste, in which classified work-related papers were found, are not approved to store classified information and, while in transit to the offsite burial location, are also not under the direct control of an individual who meets the requirements for authorized access to classified information.³⁵ In addition, the burial location for the unclassified shipping containers is not approved for the permanent burial of classified matter.³⁶

Although the means of shipment and the burial location do not meet the requirements for the protection and control of classified information, some measure of protection and control is provided by the unclassified offsite burial location. However, B&W Y-12 was not sufficiently attentive to the work control processes needed to clearly address the unique operational conditions for the protection and control of classified information throughout its lifecycle at the security event location. As a result, B&W Y-12 lost control of classified information through the unclassified waste stream.

Collectively, these noncompliances constitute a Severity Level II violation.

Base Civil Penalty - \$60,000

Proposed Civil Penalty (as adjusted) - \$0

C. Failure to implement a comprehensive internal self-assessment process that ensures compliance with classified information security requirements

DOE Order 470.4B, Attachment 2, *Contractor Requirements Document Safeguards and Security Program Planning*, Section 2, *Survey, Review and Self-Assessment Programs*, paragraph 2, states that “[s]urveys, self-assessments, and review programs are conducted to ensure that [safeguards and security] systems and processes at facilities/sites are operating in compliance with Departmental and national-level policies, requirements, and standards for the protection of security assets and interests. These programs provide the means for timely identification and correction of deficiencies and noncompliant conditions to prevent adverse events, and validate the effectiveness of corrective actions implemented to address identified deficiencies.”

Paragraph 7.a states that “[s]elf-assessments must have sufficient scope, depth, and frequency to ensure that at any point the facility is in compliance with all security requirements appropriate to the activities, information, and conditions at the location.”

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Contrary to the above requirements, based on the following facts, B&W Y-12's self-assessments were not sufficient in scope and depth to ensure compliance with classified information security requirements.

1. Based on interviews and document reviews, the DOE investigation found that B&W Y-12's CMPC self-assessments of the security event location were limited to basic CMPC requirements and focused mainly on the activities of the designated classified document custodians (e.g., by reviewing a sample of classified documents located in security repositories to ensure the appropriate application of classification and classifier markings).³⁷ The B&W Y-12 CMPC self-assessments also examined the postings and verified the absence of remote connectivity for copiers used to reproduce classified information and shredder output to ensure compliance with Departmental requirements.³⁸ In some cases, personnel were questioned about their knowledge of CMPC processes and/or asked to perform certain tasks (i.e., operate the copier or shredder).³⁹ B&W Y-12's classification self-assessments identified some anomalies (e.g., outdated classification guides).⁴⁰
2. Based on interviews and document reviews, the DOE investigation found no indication that the B&W Y-12 CMPC or classification self-assessments at the security event location evaluated the work control processes relevant to the potential classification of work-related information, even though work activities were related to a classified subject area.⁴¹ Additionally, no assessment activities addressed the potential for disposal of classified information through the unclassified waste profile.⁴² Historically, assessments of the waste streams (both classified and unclassified) mainly focused on the potential use of these pathways as a means to divert special nuclear material rather than the risks to the protection and control of classified information.⁴³ The B&W Y-12 classification assessments provided no documentation to indicate any evaluation of the potential for work-related papers to be classified or become classified when compiled or associated with other work-related information.⁴⁴
3. The CMPC and classification self-assessments conducted by B&W Y-12 did not provide the means for timely identification and correction of noncompliant conditions, such as those revealed by this security event.⁴⁵

Collectively, these noncompliances constitute a Severity Level II violation.

Base Civil Penalty - \$60,000

Proposed Civil Penalty (as adjusted) - \$0

³⁷ *Id.* at 7.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 8.

II. OPPORTUNITY TO FILE A REPLY

Pursuant to 10 C.F.R. § 824.6(a)(4), B&W Y-12 may submit a written reply within 30 calendar days of receipt of this PNOV. B&W Y-12 may submit a request for a reasonable extension of time to file a reply to the Director, Office of Enforcement, in accordance with 10 C.F.R. § 824.6(d). The reply should be clearly marked as a "Reply to the Preliminary Notice of Violation."

If B&W Y-12 chooses not to contest the violations set forth in this PNOV, then this PNOV will constitute a final order upon the filing of the reply.

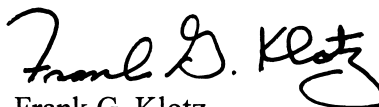
If B&W Y-12 disagrees with any aspect of this PNOV, then as applicable and in accordance with 10 C.F.R. § 824.6(b), the reply must: (1) state any facts, explanations, and arguments that support a denial of an alleged violation; and (2) discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE. In addition, 10 C.F.R. § 824.6(b) requires that the reply include copies of all relevant documents.

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

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

A copy of the reply should also be sent to my office and the Manager of the NNSA Production Office Y-12.

Pursuant to 10 C.F.R. § 824.6(c), if B&W Y-12 fails to submit a written reply within 30 calendar days of receipt of this PNOV, B&W Y-12 relinquishes any right to appeal any matter in this PNOV and this PNOV will constitute a final order.



Frank G. Klotz
Under Secretary for Nuclear Security
Administrator, NNSA

Washington, DC
This 28th day of Jan. 2016