



Department of Energy

Washington, DC 20585

March 12, 2015

Mr. Dennis Carr
Program Manager
Fluor-B&W Portsmouth, LLC
P.O. Box 548
3930 U.S. Route 23 South
Piketon, Ohio 45661

WCO-2015-01

Dear Mr. Carr:

The Office of Enterprise Assessments' Office of Enforcement completed its investigation into the facts and circumstances associated with potential deficiencies regarding proper recognition, handling, and disposal of asbestos containing materials and worker exposure monitoring at the Department of Energy's (DOE) Portsmouth Gaseous Diffusion Plant in Pike County, Ohio. Fluor-B&W Portsmouth, LLC (FBP) reported noncompliances associated with a series of events in DOE's Noncompliance Tracking System under report NTS--PPPO-FBP-PORTSDD-2014-0002, dated October 16, 2014.

FBP identified noncompliances with asbestos management requirements prescribed in 10 C.F.R. Part 851, *Worker Safety and Health Program*, 29 C.F.R. Part 1910, *General Industry Regulations*, and 29 C.F.R. Part 1926, *Construction Industry Regulations*. FBP's corrective action plan fully addresses the deficiencies associated with the recognition, handling, and disposal of asbestos and the implementation of asbestos regulatory requirements.

In accordance with 10 C.F.R. § 851.41, *Settlement*, the Office of Enforcement has elected to resolve this matter through execution of a Consent Order. In deciding to enter into this Consent Order, DOE placed considerable weight on FBP's comprehensive review, investigation, causal analysis, and corrective actions related to asbestos program implementation.

DOE reserves the right to re-open this investigation if DOE later becomes aware that FBP 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 timely complete all action items prescribed in the Consent Order (or other related actions that FBP 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 Portsmouth/Paducah Project Office will continue to closely monitor FBP's implementation of DOE 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 1 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 Mr. Kevin Dressman, Director, Office of Worker Safety and Health Enforcement, at (301) 903-0100.

Sincerely,

A handwritten signature in black ink that reads "Steven C. Simonson". The signature is written in a cursive style with a large initial 'S'.

Steven C. Simonson
Director
Office of Enforcement
Office of Enterprise Assessments

Enclosure: Consent Order (WCO-2015-01)

cc: William Murphie, Portsmouth/Paducah Project Office
Doug Fogel, Fluor-B&W Portsmouth

In the matter of) Report No. NTS--PPPO-FBP-PORTSDD-2014-0002
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Fluor-B&W Portsmouth, LLC)
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) Consent Order WCO-2015-01

CONSENT ORDER INCORPORATING AGREEMENT BETWEEN THE U.S.
DEPARTMENT OF ENERGY AND FLUOR-B&W PORTSMOUTH, LLC

I

Fluor-B&W Portsmouth LLC (FBP) is responsible for the management and operation of the Department of Energy’s (DOE) Portsmouth Gaseous Diffusion Plant (PORTS) in Pike County, Ohio. FBP is the prime contractor under Contract No. DE-AC30-10CC40017 entered into with DOE.

The Atomic Energy Commission constructed PORTS between 1952 and 1956 to enrich uranium to nuclear weapons grade levels for United States defense purposes. Asbestos containing materials were commonplace during that era and used extensively during the construction of PORTS. In the 1960’s, PORTS’s mission changed from enriching uranium for nuclear weapons, to focus on producing fuel for nuclear power plants. The gaseous diffusion technology was placed in cold standby mode in 2001 and transitioned into cold shutdown in 2005. In 2010, FBP contracted with DOE to support the transition from cold shutdown to decontamination and decommissioning of the PORTS facilities.

II

DOE conducted an investigation into the facts and circumstances associated with potential deficiencies in FBP’s implementation of DOE’s asbestos requirements at PORTS. The investigation covered a series of events that occurred from June 2013 through April 2014 involving potential worker exposure to unrecognized or uncontrolled asbestos hazards. The events included the following:

- June 14, 2013 – FBP discovered heat resistant fabric gloves containing asbestos during the cleanup of a lab that had been routinely used by workers in the area. FBP notified personnel of possible exposure to asbestos containing material (ACM) from the gloves, removed and disposed of the ACM, and issued two daily safety sheets to the workers listing items that were ACM and presumed asbestos containing material (PACM).

- July 26, 2013 – FBP transferred a transformer core to an off-site entity, which discovered asbestos inside of the equipment. FBP submitted an internal problem report and a DOE Occurrence Reporting and Processing System (ORPS) Report (EM-PPPO-FBP-PORTSDD-2013-0023). FBP completed seven actions to address the generation, characterization, and disposition of recycled material, and a briefing of Waste Disposition and Waste Characterization Specialists. FBP determined that potential asbestos exposure to workers from the transformer core removal and shipment was minimal after air samples revealed less than detectable levels of asbestos. FBP submitted an internal problem report and ORPS Report EM-PPPO-FBP-PORTSDD-2013-0026 documenting the potential exposure to workers.
- October 28, 2013 – FBP discovered that the barrier tape around a pallet of bagged asbestos had been removed, leaving the asbestos hazard area unlabeled. FBP submitted an internal problem report.
- April 1, 2014 – FBP determined that roof louver housing siding panels of a building were composed of corrugated Galbestos®, containing greater than 1 percent asbestos. Approximately 21 workers over a period of 18 months were potentially exposed to the asbestos in the louvers while performing maintenance work on the louvers. FBP submitted two problem reports and ORPS Report EM-PPPO-FBP-PORTSDD-2014-0012. FBP issued a “Stop Work Notice,” performed an extensive review of the building drawings to identify any additional potential asbestos, and incorporated asbestos controls into the appropriate work control documents.
- February 27, 2014 – FBP discovered a spilled bag of unmarked material in a building. FBP treated the material as ACM and handled and disposed of the material in accordance with an internal procedure for asbestos control. FBP submitted an internal problem report on this event.
- April 3, 2014 – FBP identified PACM in the form of a black caulk material during an engineering review of the removal of bypass housing panels. At that point, the work was stopped until the material was sampled and analyzed for asbestos. Results determined the caulk was ACM. FBP submitted an internal problem report on this incident.

On July 11, 2014, the Office of Enterprise Assessments’ Office of Enforcement issued a Notice of Investigation to FBP regarding the contractor’s implementation of DOE’s asbestos requirements at PORTS. Prior to the investigation, the Office of Enforcement received a request for investigation from PORTS workforce citing concerns regarding the proper recognition, handling, and disposal of ACM and worker exposure monitoring.

On August 1, 2014, FBP commissioned a corporate oversight review of the Asbestos Management Program. The review concluded that FBP’s program was robust and compliant and identified the following three deficiencies: (1) lack of procedural requirements for containment smoke tests; (2) asbestos awareness training periodicity adequacy; and (3) ACM communications adequacy (i.e. posting and labelling).

From September 8 through 12, 2014, the Office of Enforcement conducted an onsite investigation and concluded that FBP did not meet requirements in 10 C.F.R. §§ 851.21, *Hazard identification and assessment*, and 851.22 *Hazard prevention and abatement*, and 29 C.F.R. §§ 1910.1001, *Asbestos*, and 1926.1101 *Asbestos*. Specific examples include the following:

- FBP did not maintain an asbestos inventory including documentation of the presence, location, and the quantities of asbestos before performing work.
- FBP did not affix labels where feasible to all products containing asbestos and to all containers of asbestos waste.
- FBP did not characterize or sample the Galbestos® louvers and the transformers for asbestos prior to beginning work.
- FBP did not perform a hazard assessment in the motor pool area regarding brakes and clutches possibly containing asbestos. FBP did not advise motor pool workers of the potential asbestos containing equipment.
- The FBP asbestos Class IV training did not meet the requirement for a minimum of 2 hours of instruction in accordance with Title 29 C.F.R. §1926.1101, *Asbestos*, subparagraph (k)(9)(vi). Workers stated that the training takes approximately 15 minutes to complete. In addition, a Class IV worker did not complete the required annual training. FBP did not meet the reporting and recordkeeping criteria of exposure records containing the date of measurement, operation, names, and social security numbers for affected employees, and notification to all employees of the sampling results.

On October 16, 2014, FBP voluntarily reported recurring asbestos noncompliances with 10 C.F.R. Part 851, *Worker Safety and Health Program*, requirements into DOE's Noncompliance Tracking Systems (NTS) in report NTS--PPPO-FBP-PORTSDD-2014-0002.

On November 11, 2014, FBP completed a Common Cause Analysis (CCA) to identify the extent of asbestos related issues and to ensure all issues were being addressed promptly and effectively. FBP developed additional corrective actions to address issues identified by the CCA and the Office of Enforcement investigation.

On December 5, 2014, FBP transmitted to the Office of Enforcement a request for settlement of the investigation through a Consent Order.

III

Pursuant to 10 C.F.R. § 851.41, at any time during an enforcement proceeding, 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 Part 851.

To resolve potential noncompliances of worker safety and health requirements and in consideration of FBP's investigation, causal analyses, and associated corrective actions taken since the submission of the NTS report identified above, which DOE found to be comprehensive and appropriate, DOE has elected to enter into settlement. DOE and FBP 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 FBP (hereinafter the "Parties"), the following terms represent agreement by the authorized representatives of the Parties to resolve by settlement the potential noncompliances at the Portsmouth Gaseous Diffusion Plant, in lieu of an enforcement action that DOE may issue pursuant to 10 C.F.R. § 851.42.

1. FBP shall:
 - a) Fully implement the measures described in the document entitled: *Corrective Action Plan*, dated December 5, 2014, Attachment 7 to FBP's December 5, 2014 letter to the Office of Enforcement, by the due dates specified for each corrective action.
 - b) Provide quarterly written updates on the status of corrective actions to the Office of Enforcement and PPPO.
 - c) Notify the Office of Enforcement and PPPO of corrective actions that require an extension to the due date at least 30 calendar days before the due date.
 - d) Notify the Office of Enforcement upon completion of all actions specified in the *Corrective Action Plan*, identified in item 1a above.
 - e) Provide to PPPO, the Office of Environmental Management, and the Office of Enforcement a copy of the independent effectiveness review report when completed.
2. FBP shall pay the amount of \$50,000 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. FBP agrees to return a signed copy of this Consent Order, within one week from the date of receipt, to the address provided in item 5 below.
4. The Effective Date of this Consent Order shall be the date upon which FBP signs this Consent Order.
5. FBP shall remit the monetary remedy of \$50,000 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:

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

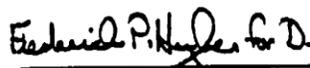
6. This Consent Order shall constitute a full and final settlement of the potential noncompliances identified in the referenced NTS report, subject to the following: (a) FBP's payment of the monetary remedy in accordance with item 5 above; and (b) FBP's completion of all actions set forth in item 1 above to the satisfaction of the Office of Enterprise Assessments' Office of Enforcement.
7. Neither the monetary remedy nor any costs, as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, incurred by, for, or on behalf of FBP relating to coordination and cooperation with DOE concerning the investigation of matters covered by this Consent Order, shall be considered allowable costs under the Contract. However, costs incurred by, for, or on behalf of FBP 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.
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 FBP; (b) there is a recurrence of worker safety and health deficiencies similar to those identified above; or (c) FBP 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. FBP 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 Fluor-B&W Portsmouth LLC

 Date 3/12/15
Steven C. Simonson
Director
Office of Enforcement
Office of Enterprise Assessments

 Date 3/17/15
Dennis Carr
Program Manager
Fluor-B&W Portsmouth, LLC