



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



July 28, 2015

VIA OVERNIGHT CARRIER

Dr. Charles F. McMillan, President
Los Alamos National Security, LLC
Los Alamos National Laboratory
Mailstop A 100, Drop Point 31S
Bikini Atoll Road, TA-3
Los Alamos, New Mexico 87545-1663

SEA-2015-02 (FNOV)

Dear Dr. McMillan:

Pursuant to section 234B of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. § 2282b, and the Department of Energy (DOE) regulations at 10 C.F.R. Part 824, DOE's National Nuclear Security Administration (NNSA) is issuing this Final Notice of Violation (FNOV) to Los Alamos National Security, LLC (LANS) for multiple violations of DOE classified information security requirements. The FNOV is based upon DOE's investigation and an evaluation of the evidence that LANS presented to DOE, including: LANS' final inquiry report; corrective actions; information provided at the enforcement conference; and LANS' reply dated June 29, 2015, to the Preliminary Notice of Violation (PNOV) dated May 27, 2015. For the reasons set forth in the enclosed FNOV, NNSA has modified the civil penalty assessed in the PNOV for failure to control classified matter (i.e., Violation B) by removing the per-day penalty for a continuing violation. NNSA finds no other basis for modifying the PNOV. In accordance with 10 C.F.R. § 824.4, the FNOV imposes a civil penalty of \$192,500.

All classified matter, including unaccountable classified matter, requires protection and control from loss, theft, espionage, unauthorized access, and compromise when generated, received, transmitted, used, stored, reproduced, permanently buried, or awaiting destruction. LANS failed to recognize the apparent discrepancies between assembled shipping papers and transfer documents relative to a classified shipment, and lacked knowledge of the contents of the shipping container, as well as the physical characteristics of the contents, which demonstrated a significant shortcoming in LANS' processes for controlling classified matter throughout its lifecycle. Furthermore, LANS' inquiry did not accurately reconstruct this security event and therefore, the basis for its conclusion on the possibility for compromise was not based on facts and



circumstances surrounding this security event. Pursuant to 10 C.F.R. § 824.7(b), LANS has the right to submit to the Director of the Office of Enforcement, within 30 calendar days of the receipt of the FNOV, a written request for a hearing under § 824.8 or, in the alternative, to elect the procedures specified in Section 234A.c.(3) of the Act, 42 U.S.C. § 2282a.(c)(3).

Sincerely,


Frank G. Klotz

Enclosures: Final Notice of Violation – SEA-2015-02 (FNOV)

cc: Kimberly Davis Lebak, NA-LA
Darryl Overbay, LANS
Alex Romero, LANS

Final Notice of Violation

Los Alamos National Security, LLC
Los Alamos National Laboratory

SEA-2015-02 (FNOV)

The U.S. Department of Energy (DOE) conducted an investigation into the facts and circumstances surrounding an incident of security concern (IOSC) regarding the loss of control of classified matter that was discovered in December 2012 (hereinafter referred to as the security event) at the Los Alamos National Laboratory (LANL), which is managed and operated for the DOE National Nuclear Security Administration (NNSA) by Los Alamos National Security, LLC (LANS).¹ Following the investigation, DOE issued an investigation report, *Loss of Control of Classified Matter: Los Alamos National Laboratory, Los Alamos National Security, LLC* (hereinafter referred to as the DOE investigation report) dated May 20, 2014, which was provided to LANS on the same date.² The DOE investigation report identified multiple violations by LANS of DOE classified information security requirements.

On May 27, 2015, NNSA issued a Preliminary Notice of Violation (PNOV) to LANS with a total proposed civil penalty of \$247,500 for two Severity Level I violations of requirements set forth in DOE Manual 470.4-1, Chg. 1, *Safeguards and Security Program Planning and Management* (March 7, 2006), and NNSA Policy (NAP) 70.4, *Information Security* (July 2, 2010), and one Severity Level II violation of DOE classified information security requirements set forth in DOE Manual 470.4-1, Chg. 1.³

NNSA received LANS' reply to the PNOV on July 1, 2015 (hereinafter referred to as the reply).⁴ In its reply, LANS challenges NNSA's decision to assess two Security Level 1 violations (Violations A and B) and one Security Level 2 violation (Violation C) of DOE classified information security requirements.⁵ Additionally, LANS argues that the civil penalties proposed in the PNOV are excessive; stating that Violations A and B should not

¹ Management and Operating Contract for the Los Alamos National Laboratory National Nuclear Security Administration, Contract No. DE-AC52-06NA25396, awarded December 21, 2005, (LANS Contract). The LANS Contract has since been modified.

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

³ The DOE manuals are applicable to LANS pursuant to the LANS Contract, Part III – Section J, Clause I.123 – DEAR 970.5204-2, Laws, Regulations and DOE Directives (Dec. 2000), Appendix G, List of Applicable Directives. DOE Manual 470.4-1, Chg. 1 and NAP 70.4 were incorporated into Appendix G at the time of the security event; they were no longer incorporated in Appendix G as of the date of issuance of this Final Notice of Violation.

⁴ Letter from David A. Sosinski, General Counsel, LANS to Steven C. Simonson, Director, Office of Enforcement, *reply to Preliminary NOV SEA-2015-2*, dated June 29, 2015.

⁵ *Id.* at 3-6.

be considered Severity Level I and Violation B should not be considered a continuing violation.⁶

After thoroughly considering the reply, NNSA finds no merit in LANS' challenge to NNSA's determination in the PNOV that LANS violated DOE/NNSA classified information security requirements. In its reply, LANS asserts that the PNOV is inconsistent in nearly all respects with the position taken by LANS at the enforcement conference on August 12, 2014.⁷ All information relative to the investigative process, including the information that LANS provided at the enforcement conference, was considered by NNSA and appropriately reflected in the PNOV.

In its reply, LANS states that it did not violate the requirements to conduct an adequate IOSC inquiry (i.e., Violation A) because the inquiry "correctly" concludes that the possibility for compromise of classified information was "low."⁸ However, the LANS final inquiry failed to recognize the 14 months during which the location of the item in question (hereinafter referred to as the security event item) was downgraded from a highly secure Material Access Area (MAA) to a Limited Area (LA).⁹ As detailed below in Section I.A, these two physical protection strategies provide vastly different deterrence and detection capabilities. Since LANS did not recognize the downgraded security posture of the security event item location, LANS did not consider the change in detection capabilities and the increased likelihood of undetected removal through this credible, lower-security pathway in concluding the possibility for compromise.

The reply also states that LANS did not violate DOE or NNSA requirements for protection and control of the security event item (i.e. Violation B), because it was unaccountable classified matter.¹⁰ However, LANS is required to protect and control all classified matter, formally accountable or not, throughout its lifecycle from loss, theft, espionage, unauthorized access, or compromise.¹¹ LANS' control of the security event item was indicated when the shipping papers and transfer documentation were completed, providing photographs and dimensional specifications of the security event item. Loss of control was realized when the security event item was not found in the shipment, as documented, and to date, the fate of the security event item remains unknown. As LANS states, the security event item did not require the additional administrative accountability measures required for some limited categories of classified information (e.g., Top Secret and special access programs).¹² However, the lack of additional administrative accountability requirements does not relieve LANS from the requirements to protect and control all classified matter, as stated above. Furthermore, although the security event item was classified as Secret/Restricted Data Weapons Data (S/RD WD) and thus did not require formal accountability, it did contain accountable quantities of nuclear material.¹³

⁶ *Id.* at 6-7.

⁷ *Id.* at 1.

⁸ *Id.* at 3-5.

⁹ DOE investigation report, at 4.

¹⁰ Reply, at 3.

¹¹ NAP 70.4, Section A, subparagraph 1.

¹² Reply, at 3.

¹³ DOE investigation report, at 5.

This nuclear material was accounted for in the LANS nuclear material control and accountability system.¹⁴ However, it was erroneously removed from accountability based on the documented shipment of the security event item, not based on documented destruction through one of LANS' approved classified destruction pathways.¹⁵

LANS also challenges the PNOV's conclusion that LANS' self-assessment program was inadequate (i.e. Violation C) on the basis that the self-assessment program was approved by NNSA.¹⁶ On June 23, 2011, LANS submitted to NNSA a request for review and approval of a listing of proposed self-assessment scopes.¹⁷ In LANS' list, the safeguards and security subtopical areas were ranked by risk (i.e., High, Medium, and Low), as determined by LANS management.¹⁸ LANS fails to mention in its reply that the list showed the risk ranking for the subtopical area of classified matter protection and control (CMPC) as High, stating that "[d]ue to the importance of this area [LANS management] has determined that this be a FULL-scope self-assessment in FY12."¹⁹ However, as stated in Section I.C, LANS excluded from the scope of its CMPC self-assessments an entire subset of classified matter (i.e., any classified matter, including documents, material, or parts, openly stored in vaults and vault-type rooms). NNSA does not consider LANS' CMPC self-assessments to be comprehensive or to constitute a full-scope review of a subtopical area ranked as High risk in the approved self-assessment plan.

In addition, NNSA finds no basis to modify its assessment of Violations A and B as Severity Level I violations. NNSA continues to recognize the seriousness of the violations committed by LANS. This security event resulted in the loss of control of S/RD WD confirmed to be of security significance and in some circumstances to pose a high level of damage to national security, if compromised.²⁰ Thus, NNSA concludes that Violations A and B involve actual or high potential for adverse impact on national security, and Violation C represents a significant lack of attention or carelessness toward the protection of classified information that, if uncorrected, could lead to an adverse impact on national security.

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ Reply, at 5. LANS encloses as Exhibit A correspondence documenting NNSA's approval of the LANS Fiscal Year 2012 Self-Assessment Plan. The correspondence consists of a letter from Michael A. Lansing, Associate Director for Security and Safeguards, LANS, to Harold Brockelsby, Assistant Manager for Safeguards and Security, Los Alamos Site Office (June 23, 2011), and a letter response from Harold Brockelsby, Assistant Manager Safeguards and Security, and Roger E. Snyder, Contracting Officer Representative, Los Alamos Site Office, to Michael A. Lansing, Associate Director, Associate Director for Security and Safeguards, LANS (July 20, 2011).

¹⁷ *Id.* at Exhibit A (letter from Michael A. Lansing, Associate Director for Security and Safeguards, LANS, to Harold Brockelsby, Assistant Manager for Safeguards and Security, Los Alamos Site Office (June 23, 2011)).

¹⁸ Proposed ADSS Self Assessment Plan for Fiscal Year 2012 (FY12). The listing of proposed self-assessment scopes was not included in Exhibit A of LANS' reply. The listing was subsequently provided to DOE upon request.

¹⁹ *Id.* at 1.

²⁰ LANS inquiry report, at Part II, Attachment 1.

However, NNSA has decided to modify the assessment of Violation B by eliminating the per-day civil penalty that the PNOV identified as a continuing violation. This determination is based on further evaluation and consideration of the corrective actions LANS has taken to address the shortcomings in its work control processes for classified shipping activities, as well as LANS' revision of its material control and accountability procedures and training. In addition, NNSA recognizes that the circumstances surrounding this security event were not the result of recurring noncompliant conditions.

Pursuant to 10 C.F.R. § 824.7(b), NNSA hereby issues this Final Notice of Violation (FNOV) to LANS for two Severity Level I violations and one Severity Level II violation of DOE's classified information security requirements as set forth below.

I. Violations

A. Failure to factually reconstruct an IOSC and adequately define the potential risk based on the facts and circumstances surrounding an IOSC

DOE Manual 470.4-1, Chg. 1, Attachment 2, *Contractor Requirements Document*, Part 2, *Safeguards and Security Management*, Section N, *Incidents of Security Concern*, Chapter I, *Identification and Reporting Requirements*, paragraph 6.b.(2)(a) states that an IOSC inquiry must “[r]econstruct the incident of security concern to the greatest extent possible using collected information and other evidence.”

Paragraph 7.b.(4) states that “[a]n inquiry official’s conclusion and the basis/facts that support the conclusion are essential.” Subparagraph (a) states that “[g]iven the facts determined through the inquiry, the conclusion of the final report must address the potential risk to the security interest based upon a subjective analysis of the facts and circumstances surrounding the incident of security concern.”

Contrary to these requirements, based on the following facts, the LANS IOSC inquiry (hereinafter referred to as the LANS inquiry report) failed to factually reconstruct the security event to the greatest extent possible.²¹ As a result, LANS did not adequately address the potential risk to the involved security interest based on subjective analysis of facts and circumstances surrounding this IOSC.

1. In December 2012, LANS employees working at the Nevada National Security Site (NNSS) identified inconsistencies in an S/RD WD item – the security event item – that was documented as having been shipped from LANL to NNSS in 2007.²² LANS personnel at NNSS determined that the contents of the 2007 shipment did not match all of the documentation that accompanied the shipment

²¹ In April 2013, DOE's Office of Enterprise Assessments became aware of an IOSC that was closed by LANS that same month in the Safeguards and Security Information Management System, reporting on the classified LANS inquiry report, dated March 22, 2013.

²² DOE investigation report, at 2.

and concluded that the security event item had not been shipped from LANL in 2007.²³

2. The LANS inquiry report consisted of two parts. In Part I, the section titled “Inquiry Officials Risk Assessment” expresses doubt that the security event item ever left LANL.²⁴ The report also states that there is no evidence the security event item left the secure environment at LANL, and that the most likely disposition of the security event item was through approved secure destruction.²⁵
3. The DOE investigation determined that LANS based these conclusions on two assumptions: (1) it is unlikely that the S/RD markings were simply removed from the security event item and tossed in the trash; and (2) the last known location of the security event item was decertified as a security area in August 2007, so it is unlikely that a scientist saved the item and walked out with it later because the 24-hour protective force remained in place until all classified holdings were removed.²⁶
4. The DOE investigation evaluated the physical security posture of the last known location from the time the security event item was last documented by photographic evidence (hereinafter referred to as the security event item location) until April 2006, when the security event item location was downgraded to an LA. Prior to the downgrade, the security event item location was considered an MAA that was surrounded by a Protected Area (PA), with a modified perimeter intrusion detection and assessment system as required for the protection and control of Category I and II special nuclear material (SNM).²⁷ Under this configuration, all persons and vehicles entering and exiting the security event item location were required to be inspected via x-ray machines, as well as metal and SNM monitors, to prevent the introduction of prohibited articles and the unauthorized removal of SNM and classified matter.²⁸ The DOE investigation determined that under these security conditions, the likelihood of the security event item being removed by unauthorized means is remote, given the deterrence and detection capabilities

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ *Id.* The DOE investigation also found that the LANS inquiry report assumed that the security event item was destroyed by one of two approved methods prior to 2006 or by a sanitization shot. *Id.* The DOE investigation determined that the first two methods could not have been used because the security event item was not a candidate for the identified destruction methods, and that no conclusive determination is possible regarding whether the security event item was destroyed by a sanitization shot. *Id.* at 4-5. At the enforcement conference, LANS provided sworn affidavits from LANS employees who DOE interviewed during the DOE investigation and LANS re-interviewed later. In the affidavits, the LANS employees provided information inconsistent with what they had told DOE investigators (i.e., in the affidavits they stated that it was probable that the security item was destroyed by one of two approved methods). DOE responded that the information in the DOE investigation report is consistent with information initially provided by the LANS employees. Enforcement Conference Summary, at 1-2.

²⁶ DOE investigation report, at 3.

²⁷ *Id.*

²⁸ *Id.*

provided by these physical security protection measures.²⁹

5. The DOE investigation determined that the physical security posture of the security event item location was downgraded in April 2006 to an LA due to the removal of all Category I and II SNM from the security event item location.³⁰ The remaining security assets, such as the security event item, only had the protection and controls provided by vaults or vault-type rooms (VTRs) within an LA. The access area alarms for the security event item location were deactivated when the security posture was downgraded to an LA, leaving only three exterior door alarms active.³¹ The documentation certifying the security event item location as being protected only by vaults/VTRs states that as of September 2006, 39 individuals had access to the security event item location, 16 of whom had frequent access and building keys. In addition, under the downgraded LA configuration, all but two protective force posts were removed from the security event item location. The remaining posts were a 24/7 LA roving patrol responsible for conducting checks of gates and other areas (building checks were eliminated in October 2006) and an entry post responsible for the badge exchange program, which operated from 6:30 a.m. to 6:00 p.m. Monday through Friday (excluding holidays).³² The entry post orders did not require searches of pedestrians or vehicles.³³ The inspections via x-ray machines and metal and SNM monitors, intended to prevent the introduction of prohibited articles and the unauthorized removal of SNM and classified matter, were no longer conducted as they are not required for an LA.³⁴

6. The DOE investigation determined that the LANS inquiry report inaccurately assumed that the MAA/PA security posture was in place until the security event item location was deactivated as a security area in August 2007 (i.e., when all classified matter was removed).³⁵ As a result of this erroneous assumption, the LANS inquiry report concluded that the probability of the security event item being removed by unauthorized means was low, when in fact the means to detect and deter the unauthorized removal of classified matter at the security event item location had diminished for over a year.³⁶ The LANS inquiry failed to take into account the reduced security measures from April 2006 to August 2007 when considering what could have happened to the security event item. Therefore, although the LA security posture met the required protection level for classified matter such as the security event item, the downgraded security posture and the portability of the security event item suggest that the probability of undetected removal cannot be regarded as “low.” The LANS inquiry report therefore failed to factually reconstruct the security event to the greatest extent possible because its conclusions did not adequately address the possibility that the security event item

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

could have been removed from the security event item location in an unauthorized manner, and thus were not based upon subjective analysis of the facts and circumstances surrounding this IOSC.

Collectively, these noncompliances constitute a Severity Level I violation.

Base Civil Penalty - \$110,000³⁷

Civil Penalty - \$110,000

B. Failure to control classified matter

NAP 70.4, Section A, *Classified Matter Protection and Control*, subparagraph 1, states that the objectives are to “[p]rotect and control classified matter that is generated, received, transmitted, used, stored, reproduced, permanently buried or to be destroyed.”

Contrary to this requirement, based on the following facts, LANS failed to properly control classified matter.

1. The DOE investigation determined that for the 2007 shipment, the shipper/receiver agreement (SRA), *Material Control and Accountability Shipper/Receiver Agreement between Los Alamos National Laboratory and Nevada Test Site for Plutonium and Uranium Materials*, contained a section titled *Site-Specific Criteria* describing the packaging, measurement, and documentation that LANS was required to complete in order to comply with the provisions of the SRA.³⁸ The required transfer documentation included a variety of measurements and accountability values, as well as photographs and dimensional specifications.³⁹ The SRA also required LANS to provide shipping papers and transfer documents to NNSS within a few days prior to the shipment.⁴⁰
2. In 2007, LANS packed and measured an item and prepared shipping papers and transfer documents as required by the SRA.⁴¹ The DOE investigation found that the shipping papers and transfer documents prepared for the 2007 shipment included detailed photographs and dimensional specifications for the security event item.⁴² However, the security event revealed that the LANS shipping papers and transfer documents did not accurately reflect what was actually shipped to NNSS because the security event item was not in fact shipped.

³⁷ 10 C.F.R. Part 824 was amended in 2009 to reflect that effective January 13, 2010, the maximum civil penalty per violation for Base Civil Penalty for Severity Level I violations was \$110,000: 74 Fed. Reg. 66033 (December 14, 2009). The rule was amended again in 2014 to raise this figure to \$120,000 effective February 3, 2014; 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 2009 change will be applied to the proposed Base Civil Penalties for LANS because the security event was discovered in 2012.

³⁸ DOE investigation report, at 6.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

3. LANS had sufficient information (including photographs) available to identify the apparent discrepancies between the item packaged for shipment and what was represented in the shipping papers and transfer documents that were provided to NNSS days before the actual shipment.⁴³ LANS' failure to identify these discrepancies created the false assumption that the security event item had been shipped to NNSS and resulted in the loss of control of S/RD WD matter.

Collectively, these noncompliances constitute a Severity Level I violation.

Base Civil Penalty - \$110,000

Civil Penalty (as adjusted for mitigation) - \$55,000

C. Failure to implement a comprehensive internal self-assessment process addressing the protection and control of classified matter

DOE Manual 470.4-1, Chg. 1, Attachment 2, *Contractor Requirements Document*, Part 1, *Planning and Evaluation*, Section G, *Survey, Review, and Self-Assessment Programs*, paragraph 1.a, states as an objective: to “[p]rovide assurance to the Secretary of Energy, Departmental elements, and other government agencies that safeguards and security (S&S) interests and activities are protected at the required levels.”

Paragraph 1.b states as another objective: to “[p]rovide a basis for line management to make decisions regarding S&S program implementation activities, including allocation of resources, acceptance of risk, and mitigation of vulnerabilities. The results must provide a compliance- and performance-based documented evaluation of the S&S program.”

Paragraph 2.b, *Scope and Methodologies* requires that “[s]urveys and self-assessments must provide an integrated evaluation of all topical and subtopical areas to determine the overall status of the S&S program and ensure the objectives of this section are met.” Subparagraph (3) states that “[c]omprehensiveness identifies the breadth of protection afforded all activities and interests within a facility. This is accomplished by an evaluation of the adequacy and effectiveness of programs and a thorough examination of the implementation of policies, practices, and procedures to ensure compliance and performance.”

Contrary to these requirements, based on the following facts, LANS had not implemented a comprehensive self-assessment process that thoroughly evaluated the adequacy and effectiveness of its CMPC program to provide assurance to line management that the protection and control of classified matter at LANL complies with existing policies, practices, and procedures.

1. The DOE investigation found that LANS' CMPC self-assessments were not comprehensive because they did not address classified matter openly stored in

⁴³ *Id.*

vaults or VTRs.⁴⁴ Specifically, the investigation determined the LANS annual Associate Directorate for Safeguards and Security's CMPC self-assessment activities from 2008 through 2013 were limited to reviews of classified holdings stored in General Services Administration (GSA)-approved repositories.⁴⁵ In other words, LANS CMPC self-assessments did not address classified matter, in any form (e.g., documents, material, or parts), that was stored outside of a GSA-approved repository. Consequently, at the time of the security event, LANS was relying on insufficient assessment results to make decisions about the effectiveness of CMPC program activities and therefore had limited assurance that all classified matter and activities were protected and controlled at the required levels across LANL.⁴⁶

2. Because LANS did not implement a comprehensive self-assessment process that thoroughly evaluated the adequacy and effectiveness of the CMPC program, line management had limited assurance that the protection and control of classified matter at LANL complied with applicable Departmental policies. Although the noncompliant CMPC self-assessments had no impact on the circumstances of the security event, DOE has determined that they constitute a security violation of LANS' contractual requirement to protect and control classified matter.

Collectively, these noncompliances constitute a Severity Level II violation.

Base Civil Penalty - \$55,000

Civil Penalty (as adjusted for mitigation) - \$27,500

II. Assessment of Civil Penalties

The security significance of the information involved in the security event is a primary factor in NNSA's determination of the amount of civil penalties proposed for violations of DOE requirements. NNSA also determined that civil penalties are warranted because LANS failed to implement a comprehensive CMPC self-assessment program until 2014.

A. Severity of the Violations

Both the LANS inquiry report and the DOE investigation report concluded that a compromise of classified information cannot be ruled out.⁴⁷ LANS' failure to recognize the apparent discrepancies between the assembled shipping papers and the transfer documents, and its lack of knowledge of the contents of the 2007 shipment container and the physical characteristics of the contents, resulted in the loss of control of S/RD WD matter. This anomaly went unrecognized for over five years until LANS, at NNSS, discovered a potential problem with the documentation concerning the contents of the 2007 shipment on December 20, 2012.⁴⁸ LANS

⁴⁴ *Id.* at 7.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 2.

confirmed the shipping content discrepancy based on the shipping papers and transfer documents on January 7, 2013, but did not report the potential loss of classified matter to LANS' security incident team for over three weeks.⁴⁹

In addition, LANS failed to factually reconstruct the security event to the greatest extent possible, so its conclusion about the potential risk (i.e., that the security event item is unlikely to have left the secure environment of LANL, so the likelihood of a compromise of S/RD WD matter is low) was not based on a subjective analysis of the facts and circumstances surrounding this IOSC.⁵⁰ The DOE investigation report determined that this conclusion was based on the unsubstantiated assumptions that the security event item was destroyed via an approved method for classified matter destruction and that the unauthorized removal of the security event item was unlikely due to the MAA/PA security configuration of the security event item location.⁵¹ The LANS inquiry report failed to recognize that the security event item location was downgraded to an LA more than a year before LANS certified that the security event item location was free of classified matter.⁵² Consequently, although the LA security posture met the required protection level for classified matter such as the security event item, the LANS inquiry report's conclusion about the low potential risk of compromise did not consider the portability of the security event item and the probability of undetected removal, given the downgraded security posture.⁵³

The DOE investigation report also determined that the results of LANS' damage assessment, which was conducted as part of the security event inquiry due to the loss of S/RD WD matter, indicated the potential for high level of damage to national security.⁵⁴ Because LANS erroneously assumed that the physical security posture of the security event item location remained at a high level until all classified matter was removed from the security event item location, LANS incorrectly determined that the likelihood of unauthorized removal and compromise was low. Consequently, the LANS inquiry report's conclusion regarding potential risk did not correctly reflect the results of the damage assessment.

B. Mitigation of Penalties

NNSA provides strong incentives, through opportunity for mitigation, for contractors to self-identify and promptly report security noncompliances before a more significant event or consequence arises. The weaknesses that DOE identified in LANS' work control processes for shipping activities should have been identified by LANS before being revealed by this self-disclosing security event. Consequently, NNSA finds no mitigation for self-identification and reporting is warranted for Violations A, B, or C of this FNOV.

⁴⁹ LANS Final Inquiry Report, at Attachment F.

⁵⁰ DOE investigation report, at 3.

⁵¹ *Id.* at 5.

⁵² *Id.* at 4.

⁵³ *Id.*

⁵⁴ LANS inquiry report, at Part II, Attachment 1.

Another mitigating factor that NNSA considers is the timeliness and effectiveness of a contractor's causal analysis and corrective actions. LANS did not address the factual inaccuracies associated with its inquiry report and the impact on LANS' conclusion about potential risk. After the enforcement conference, LANS provided additional documentation to clarify the protection measures that were in place after the security event item location had been downgraded to an LA. This documentation did not differ from documentation that LANS provided to DOE during the DOE investigation. In fact, the documentation supports DOE's conclusion that LANS failed to recognize the downgraded physical security posture at the security event item location during the conduct of its inquiry. Consequently, NNSA finds no mitigation for corrective actions involving Violation A is warranted.

Upon discovery of the security event, LANS implemented corrective actions that could reduce the likelihood of recurrence of the loss of control of classified matter. For example, LANS completed a management self-assessment of its performance relative to management of classified parts and accelerated the completion of its annual inventory of classified parts, which revealed 100 percent accuracy.⁵⁵ In addition, LANS addressed shortcomings in its work control processes for shipping activities that contributed to this security event and revised its material control and accountability procedures and training.⁵⁶ Finally, in January 2014, LANS revised the scope of its CMPC self-assessments to include classified assets openly stored in vaults and VTRs. The CMPC self-assessments that LANS has conducted since this change have appropriately reviewed classified assets stored in GSA-approved repositories and openly stored in vaults and VTRs. As a result, NNSA finds that 50 percent mitigation is warranted for corrective actions associated with Violations B and C.

C. Civil Penalties

NNSA concludes that civil penalties are fully warranted in this case. While civil penalties assessed under 10 C.F.R. Part 824 should not be unduly confiscatory, they should nonetheless be commensurate with the gravity of the violations at issue. In assessing penalties, NNSA considered the nature and severity of the violations in this case, as well as the circumstances in which they occurred.

In light of these considerations, NNSA proposes the imposition of a civil penalty of \$275,000 for the two Severity Level I violations and one Severity Level II violation, less 50 percent mitigation for corrective actions associated with Violations B and C, resulting in a total proposed civil penalty of \$192,500.

⁵⁵ *Id.* at Report by office concerned.

⁵⁶ *Id.*

III. Required Response

Pursuant to 10 C.F.R. § 824.7(d)(2), LANS must, within 30 calendar days of receipt of this FNOV, submit to the Director of the Office of Enforcement one of the following:

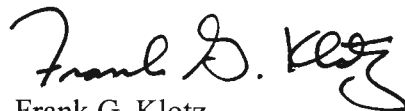
- (a) A waiver of further proceedings
- (b) A request for an on-the-record hearing under 10 C.F.R. § 824.8
- (c) A notice of intent to proceed under section 234A.c.(3) of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2282a.(c)(3)).

LANS' response to the FNOV shall be directed via overnight carrier to the following address:

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

A copy of any response should also be sent to the Manager of the Los Alamos Field Office, and to my office. The response shall be clearly marked as a "Response to a Final Notice of Violation."

If LANS submits a waiver of further proceedings, the FNOV shall be deemed a final order enforceable against LANS. LANS shall submit payment of the civil penalty within 60 days of the filing of the waiver unless additional time is granted by the Director, Office of Enforcement. The civil penalty shall be paid by check, draft, or money order payable to the Treasurer of the United States (Account 891099) and mailed to the address provided above.



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

Washington, DC
This 28 day of July 2015