

November 3, 2000

IA-00-039

Mr. David D. Klepadlo
HOME ADDRESS DELETED
UNDER 10 CFR 2.790

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES -
EFFECTIVE IMMEDIATELY
(NRC Investigation Report No. 1-2000-012)

Dear Mr. Klepadlo:

Our letter dated September 18, 2000, informed you that an apparent violation of 10 CFR 30.10 was identified and was being considered for escalated enforcement action against you in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The apparent violation involved your providing false information to the NRC regarding the possession of two gauges containing licensed material.

Our September 18, 2000 letter also gave you seven days to notify the NRC whether you wanted to respond to the apparent violation within 30 days or request a predecisional enforcement conference. We also informed you that it might not be necessary to conduct a predecisional enforcement conference in order for the NRC to make an enforcement decision. On September 25, 2000, you informed Mr. John Kinneman, of the NRC Region I Office, that you did not want a predecisional enforcement conference, but would like to provide a written response to the apparent violation.

In a letter dated October 17, 2000, you provided a response that denied you had made false statements to the NRC concerning the location of two Troxler nuclear density gauges. Notwithstanding your contention, the NRC has concluded, based on the NRC Office of Investigations (OI) report and for the reasons set forth in the enclosed Order, that you knew the two Troxler nuclear density gauges were in the possession of David D. Klepadlo & Associates, and that you knowingly provided false and misleading information to the NRC regarding possession of those gauges. The synopsis of the OI investigation was sent to you in our September 18, 2000 letter.

As such, you violated 10 CFR 30.10(a)(2), which prohibits individuals from knowingly providing inaccurate information to the NRC. In addition, you violated 10 CFR 30.10(a)(1), in that you deliberately caused your company to violate 10 CFR 30.9, which requires information provided

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Mr. David D. Klepadlo

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to the Commission to be complete and accurate in all material respects. As a result, the enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued to you.

The Order prohibits your involvement in NRC-licensed activities for three years and requires that you provide an answer to it within 20 days of the date of this letter. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who wilfully violates, attempts to violate, or conspires to violate any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order may be addressed to Mr. R. W. Borchardt, Director, Office of Enforcement. Mr. Borchardt can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your home address removed, and its enclosure, will be available electronically for public inspection in the NRC Public Document Room or from the Publically Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Reading Room).

Sincerely,

/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Enclosure: Order Prohibiting Involvement in NRC-Licensed
Activities (Effective Immediately)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mr. David D. Klepadlo

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IA-00-039

ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. David D. Klepadlo (Mr. Klepadlo) is currently the President of David D. Klepadlo & Associates (K & A). K & A was the holder of Materials License No. 37-30236-01 issued by the Nuclear Regulatory Commission (NRC) on September 11, 1995, pursuant to 10 CFR Part 30, until such License was revoked on August 9, 1999, for non-payment of fees. The license authorized possession and use of two Troxler Electronics Laboratories (Troxler) portable nuclear density gauges (gauges).

II

On July 9, 1999, an Order Revoking License was issued to K & A for non-payment of fees, and on August 9, 1999, the license was revoked. Following the revocation of K & A's license, Mr. Oberg, an NRC inspector, contacted Mr. Klepadlo by telephone on August 12, 1999. Mr. Klepadlo told Mr. Oberg that he no longer possessed the two Troxler gauges, having returned them to Troxler, and further stated that he would look for the documentation showing the gauges were returned to Troxler and would contact the NRC. In a letter to the NRC dated September 3, 1999, Mr. Klepadlo stated, "These test gauges were returned to Troxler in North Carolina in the Fall of 1997 and have not been in our possession since that time." However, Mr. Klepadlo did not provide any documentation supporting that the gauges were returned to Troxler.

On October 25, 1999, the NRC sent a letter to K & A indicating that the NRC had not yet received any documentation from K & A that the gauges had been returned to Troxler, and that Troxler had no record of receipt of the gauges. This letter also requested that K & A verify the final disposition of the gauges. Since repeated attempts by the NRC failed to ascertain the disposition of the gauges, an NRC inspection was conducted at the K & A facility on February 22, 2000, during which both Troxler gauges were found to be stored at the facility.

III

The NRC requirement of 10 CFR 30.10(a)(1) prohibits deliberate misconduct that causes a licensee to be in violation of any license issued by the NRC. Also, the NRC requirement of 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual knows to be incomplete or inaccurate in some respect material to the NRC.

The NRC has concluded that Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2). Specifically, after the NRC revoked K & A's Materials License No. 37-30236-01 on August 9, 1999, Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2) when he knowingly and deliberately provided false information to the NRC, which caused K & A to violate 10 CFR 30.9. The violation occurred when Mr. Klepadlo: (1) told an NRC inspector during a telephone conversation on August 12, 1999, that he no longer possessed the gauges, having returned them to Troxler; and (2) signed and submitted a letter to the NRC on September 3, 1999, that the gauges were returned to Troxler in North Carolina in the Fall of 1997 and have not been in K & A's possession since that time. This was false information because the gauges were at the K & A facility at the time of Mr. Klepadlo's August 12, 1999, statement and September 3, 1999, letter.

Before the NRC made this final enforcement decision, a letter from the NRC dated

September 18, 2000, afforded Mr. Klepadlo an opportunity to request a predecisional enforcement conference or respond in writing to the apparent violation. Mr. Klepadlo responded to the apparent violation in a letter dated October 17, 2000, stating that the NRC's conclusion that he made false statements to the NRC concerning the location of the gauges was incorrect. Mr. Klepadlo stated that as President of K & A, he cannot personally know the location of every piece of equipment owned by the company, and therefore, was not aware of the specific location of the gauges at each and every moment.

Notwithstanding Mr. Klepadlo's contention, the NRC maintains that the violation was deliberate. In making this conclusion, the NRC considered that: (1) the Radiation Safety Officer (RSO) at K & A, who cared for the gauges, was laid off in January 1998; (2) Mr. Klepadlo, during a transcribed interview with an NRC investigator on June 13, 2000, stated under oath, that once the RSO had left employment at K & A, Mr. Klepadlo's "only objective in life" was to get rid of the gauges, and that's what he tried to do, spending a lot of time contacting everyone he knew; and (3) the gauges were found at the K & A facility during an NRC inspection on February 22, 2000. Mr. Klepadlo, having been unsuccessful in his attempts to get rid of the gauges and having stated that his only objective after the RSO left was to get rid of the gauges, must have known the gauges were at K & A at the time of his August 12, 1999, oral statement to Mr. Oberg, and in his September 3, 1999, letter to the NRC. Therefore, the NRC concludes that his false statements were also deliberate.

IV

The NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Klepadlo's actions in deliberately violating Commission regulations, and deliberately and knowingly providing false information to the NRC calls into question his

trustworthiness and reliability, and raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that any future licensed activities could be conducted in compliance with the Commission's requirements, and that the health and safety of the public would be protected, if Mr. Klepadlo were permitted to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that David D. Klepadlo be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Klepadlo is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of Mr. Klepadlo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- 1: David D. Klepadlo is prohibited from engaging in NRC-licensed activities for three years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

- 2) If Mr. Klepadlo is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

- 3) For a period of one year after the three year period of prohibition has expired, Mr. Klepadlo shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Klepadlo shall include a statement of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Klepadlo of good cause.

VI

In accordance with 10 CFR 2.202, David D. Klepadlo must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall,

in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Klepadlo or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Klepadlo if the answer or hearing request is by a person other than Mr. Klepadlo. If a person other than Mr. Klepadlo requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Klepadlo or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Klepadlo may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the

date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Dated this 3rd day of November 2000