

March 23, 2009

IA-08-072

Jennifer O'Neill-Torres
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection Report No. 03032029/2007001 and Investigation Report No.
1-2008-030)

Dear Ms. O'Neill-Torres:

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted from May 1, 2007, through September 23, 2008, and to the investigation initiated by the NRC Office of Investigations (OI) on March 7, 2008, regarding your activities at S&M Testing Laboratory (S&M Testing). The purpose of the inspection and investigation was, in part, to determine if you deliberately failed to: (1) confine possession of NRC-licensed material to locations authorized on the NRC license, as required by 10 CFR 30.34(c); and (2) provide the NRC an opportunity to inspect the materials, activities, and facilities to verify security of licensed material in S&M Testing's possession, as required by 10 CFR 30.52(a). The NRC inspection report and a factual summary of the OI report were provided to you by letter dated January 6, 2009.

The January 6, 2009, NRC letter indicated that you were in apparent violation of 10 CFR 30.10, "Deliberate misconduct," in that you deliberately caused S&M Testing to be in violation of NRC requirements as described herein. 10 CFR 30.10(c) (1) defines deliberate misconduct by a person as an intentional act or omission that the person knows causes a licensee to be in violation of any regulation or order. The NRC letter also offered you the opportunity to discuss these findings during a predecisional enforcement conference (PEC) or to engage the NRC in an alternative dispute resolution (ADR) mediation session. You did not respond to the letter or to the NRC staff's subsequent telephone calls regarding the letter.

Therefore, based on the information developed during the inspection and investigation, the NRC has determined that you deliberately violated NRC requirements. Specifically, you engaged in deliberate misconduct that caused S&M Testing to be in violation of: (1) 10 CFR 30.34(c), in that you deliberately failed to obtain NRC approval via an amendment to your NRC license to authorize storage of licensed gauges at an alternate location prior to moving all of your licensed gauges from the authorized location in Caguas, Puerto Rico (PR), to an unauthorized storage site at a private residence in Gurabo, PR; and (2) 10 CFR 30.52(a), in that you deliberately failed to provide the NRC an opportunity to inspect the gauges after you: failed to respond to repeated contact attempts by the NRC; were uncooperative and refused to provide an NRC inspector information regarding the licensed gauges including their location and conditions of storage during a telephone conversation on December 6, 2007; and failed to respond to NRC contact attempts subsequent to December 6, 2007.

The NRC OI, with assistance from the Federal Bureau of Investigation, successfully located and met with you on August 6, 2008, at which time you acknowledged receiving and not responding

to NRC letters and telephone calls. As the President and owner of S&M Testing, your repeated deliberate failure to respond to NRC correspondence and communication attempts constituted a violation of 10 CFR 30.10. Also, your failure to address or correct the violations, requiring the NRC to facilitate the removal of the gauges from the Gurabo, PR, location to an authorized storage location, has resulted in the loss of reasonable assurance that you may be relied upon to comply with NRC requirements. Consequently, the NRC has determined that an Order (enclosed) prohibiting your involvement in NRC-licensed activities for a period of five years is appropriate.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of the enclosed Order shall be subject to criminal prosecution as set forth in that section. Violation of the enclosed Order may also subject the person to civil monetary penalty.

In accordance with 10 C.F.R. 2.202, you must provide a response to the enclosed Order within 20 days of its issuance. If sensitive, security-related information is included in the response, please mark the entire response, "Security-Related Information – Withhold under 10 CFR 2.390." If your response does not contain any sensitive, security-related information, the NRC will make the response publicly available. In addition, you or any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Please see the enclosed Order for further instructions. If a hearing request is submitted, the NRC will make the request publicly available. Therefore, please do not include any sensitive, security-related information in the hearing request, or, in the alternative, provide a redacted copy of the hearing request that does not include any sensitive security-related information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 03032029
License No. 52-25133-01

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico

to NRC letters and telephone calls. As the President and owner of S&M Testing, your repeated deliberate failure to respond to NRC correspondence and communication attempts constituted a violation of 10 CFR 30.10. Also, your failure to address or correct the violations, requiring the NRC to facilitate the removal of the gauges from the Guarbo, PR location to an authorized storage location, has resulted in the loss of reasonable assurance that you may be relied upon to comply with NRC requirements. Consequently, the NRC has determined that an Order (enclosed) prohibiting your involvement in NRC-licensed activities for a period of five years is appropriate.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of the enclosed Order shall be subject to criminal prosecution as set forth in that section. Violation of the enclosed Order may also subject the person to civil monetary penalty.

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Sincerely,
/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 03032029
License No. 52-25133-01
Enclosure: Order-Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico **ADAMS ML090780439**

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|--------|---------------|-----------|-------------|------------|-----------|-----------|
| OFFICE | RI/ORA | RI/DNMS | RI/DNMS | RI/OI | RI/ORA | RI/ORA |
| NAME | *M McLaughlin | *M Miller | *J Kinneman | *E Wilson | *K Farrar | *D Holody |
| DATE | 02/10/09 | 02/11/09 | 02/12/09 | 02/13/09 | 02/19/09 | 02/20/09 |
| OFFICE | RI/RA | HQ/FSME | HQ/OGC | HQ/OE | | |
| NAME | M Dapas | AMcIntosa | BKlukan | CCarpenter | | |
| DATE | 2/24/09 | 2/25/09 | 3/10/09 | 3/23/09 | | |

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Region I OE Files (with concurrences)

Enforcement Coordinators RII, RIII, RIV

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Jennifer O'Neill-Torres

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IA-08-072

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Jennifer O'Neill-Torres is the President and Radiation Safety Officer (RSO) at S&M Testing Laboratory (S&M Testing) (Licensee) in Gurabo, Puerto Rico (PR). S&M Testing Laboratory holds License No.52-25133-01 originally issued to Turabo Corporation by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 25, 1991, and transferred to S&M Testing on December 31, 2002. The license authorizes possession and use of sealed radioactive sources for use in portable gauging devices for measuring physical properties of materials in accordance with the conditions specified therein. Jennifer O'Neill-Torres is listed on the license as the Radiation Safety Officer.

II

An NRC inspection was conducted from May 1, 2007, through September 23, 2008, and an investigation by the NRC Office of Investigations (OI) was initiated on March 7, 2008, regarding licensed activities at S&M Testing Laboratory. An OI investigation was conducted, in part, to determine whether a deliberate violation of NRC requirements had occurred and was completed on November 10, 2008. Based on the results of the inspection and the investigation, the NRC concluded that Jennifer O'Neill-Torres deliberately caused the Licensee to be in violation of NRC regulations, namely: (1) 10 CFR 30.34(c), in that she deliberately failed to obtain NRC approval via an amendment to S&M Testing's NRC license to authorize storage of licensed

gauges at an alternate location prior to moving all gauges from authorized storage location in Caguas, PR to an unauthorized storage location in Gurabo, PR; and (2) 10 CFR 30.52(a), in that she deliberately failed to provide the NRC an opportunity to inspect the gauges after she: failed to respond to repeated contact attempts by the NRC; was uncooperative and refused to provide an NRC inspector information regarding the licensed gauges including their location and conditions of storage during a telephone conversation on December 6, 2007; and failed to respond to subsequent contact attempts until located by the NRC OI with assistance from the Federal Bureau of Investigation on August 6, 2008.

III

Based on the above, it appears that Jennifer O'Neill-Torres, an employee of S&M Testing has engaged in deliberate misconduct, contrary to 10 CFR 30.10, which states, in part, that any Licensee or employee of a Licensee may not engage in deliberate misconduct that causes a Licensee to be in violation of any rule, regulation, or order issued by the Commission. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements.

Jennifer O'Neill-Torres's action in deliberately causing the Licensee to violate NRC requirements, including 10 CFR 30.34(c) and 10 CFR 30.52(a), has raised serious doubt as to whether she can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Jennifer O'Neill-Torres were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Jennifer O'Neill-Torres be prohibited from any involvement in NRC-licensed activities for a period of

5 years from the date of this Order. Additionally, Jennifer O'Neill-Torres is required to notify the NRC of her first employment in NRC-licensed activities for a period of 5 years following the prohibition period.

IV

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 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, THAT:

1. Jennifer O'Neill-Torres is prohibited for 5 years from the date of this Order from engaging in NRC-licensed activities. 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 Jennifer O'Neill-Torres is currently involved with another licensee in NRC-licensed activities, she 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 5 years after the 5 year period of prohibition has expired, Jennifer O'Neill-Torres shall, within 20 days of acceptance of her first employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address,

and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the notification, Jennifer O'Neill-Torres shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Jennifer O'Neill-Torres of good cause.

V

In accordance with 10 C.F.R. 2.202, Jennifer O'Neil-Torres must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Jennifer O'Neil-Torres and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed

so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the

adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than Jennifer O'Neill-Torres requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.309(d).

If a hearing is requested by Jennifer O'Neill-Torres or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. 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 IV 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 IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 23rd day of March 2009