

June 8, 2009

EA-08-332

Jennifer O'Neill-Torres
President/Radiation Safety Officer
S&M Testing Laboratory
ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTIES - \$16,250

Dear Ms. O'Neill-Torres:

This refers to the NRC letter, dated March 23, 2009, to S&M Testing Laboratory (S&M Testing) enclosing a Notice of Violation and Proposed Imposition of Civil Penalties (Notice). The Notice described eight violations identified during an NRC inspection conducted between May 1, 2007, and September 23, 2008, and an NRC Office of Investigations (OI) investigation initiated on March 7, 2008. To emphasize the importance of: (1) storing radioactive material only at authorized locations; (2) properly controlling access to licensed material; and, (3) taking prompt and comprehensive corrective actions for violations, the NRC proposed civil penalties in the amount of \$16,250.

Although a response to the NRC was required within 30 days of the date of the letter transmitting the Notice (i.e., by April 22, 2009), as of the date of this letter, you have failed to respond to the Notice and proposed civil penalties. Accordingly, we hereby serve the enclosed Order on S&M Testing, imposing the civil monetary penalties in the amount of \$16,250. Within 30 days you should either: (1) pay the civil penalties in accordance with Section IV of the Order, or (2) request a hearing in accordance with Section V of the Order. The NRC also plans to terminate your license, following the response time allowed by the Order. Failure to pay the civil penalty or request a hearing, as required by the Order, may result in this matter being turned over to the U.S. Attorney General for collection.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, 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>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that

J. O'Neill-Torres

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it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site

<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 Imposing Civil Monetary Penalty

cc w/encl:
Commonwealth of Puerto Rico

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<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 Imposing Civil Monetary Penalty

cc w/encl: Commonwealth of Puerto Rico

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JLuehman, FSME	RII, RIII, RIV (C Evans; J Heck; W. Jones)
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X Public

X Non-Sensitive

OFFICE	RI/ORA	RI/DNMS	RI/DNMS	RI/OI	RI/ORA
NAME	ADeFrancisco	MMiller/sl for	JKinneman/dc for	EWilson	KFarrar
DATE	05/ 18 /09	05/ 18/09	05/ 15 /09	05/19 /09	05/ 20 /09
OFFICE	RI/ORA	RI/RA	HQ/FSME	HQ/OGC	HQ/OE
NAME	DHolody	M Dapas	M Burgess	B Klukan	C. Carpenter
DATE	05/ 20/09	05/ 22 /09	05/ 28/09	06/03/09	6/08/09

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provide an opportunity to inspect the material, activities, and facilities to verify security of the licensed material in S&M Testing's possession, as required by 10 CFR 30.52(a).

Based on the results of the inspection and the investigation, the NRC concluded that violations of NRC requirements had occurred, involving: (1) the deliberate failure to confine possession of byproduct material to locations authorized by NRC License 52-25133-01; (2) the deliberate failure to provide the NRC an opportunity to inspect byproduct material and the premises where the byproduct material was stored, as required by 10 CFR 30.52(a); and, (3) the failure to utilize a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges were not under the control and constant surveillance of the Licensee, as required by 10 CFR 30.34(i).

III

A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice), stating the violations and the amount of civil penalties proposed for the violations, was served upon the Licensee by a letter dated March 23, 2009. Although a response to the Notice was required within 30 days of the date of the letter transmitting the Notice (i.e., by April 22, 2009), as of the date of this Order, the Licensee has failed to respond to the letter and the proposed civil penalties. Therefore, NRC staff has determined, that the proposed penalties for the violations designated in the Notice should be imposed, in the amount of \$16,250.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay civil penalties in the amount of \$16,250 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with 10 C.F.R. 2.202, the Licensee 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, the Licensee 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 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays. The help line number is (866) 672-7640.

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 the Licensee 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 a Licensee 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. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violations, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 8 day of June 2009