

January 17, 2012

EA-11-254

Mr. Tony Nassif
President and CEO
ABSG Consulting Inc.
16855 Northchase Dr.
Houston, TX 77060

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NO. 1-2010-050)

Dear Mr. Nassif:

This letter refers to an investigation conducted by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) relating to ABSG Consulting Inc. The purpose of the NRC OI investigation was to determine whether a plant employee was the subject of employment discrimination in violation of 10 CFR 50.7, "Employee protection." The NRC's investigation, dated October 5, 2011, concluded that an employee was terminated on September 28, 2009, for engaging in a protected activity. This termination occurred, in part, because the employee participated in a Commission proceeding before the NRC Atomic Safety and Licensing Board Panel.

The apparent violation, which is based on the NRC's OI investigation, was briefly discussed with a member of your staff during a January 10, 2012, telephone conversation. The enclosed redacted NRC Report of Investigation (ROI) No. 1-2010-050 provides an overview of the evidence gathered during the NRC's investigation.

Based on the NRC staff's review of the NRC OI investigation, an apparent violation of 10 CFR 50.7 was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued at this time. In addition, please be advised that the number and characterization of the apparent violation(s) may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation within 30 days of the date of this letter, (2) request to participate in a closed predecisional enforcement conference (PEC), or (3) request to participate in an alternative dispute resolution (ADR) session. These options are discussed in the paragraphs that follow. Please contact Mr. Russell Arrighi, Senior Enforcement

Specialist, Office of Enforcement, at (301) 415-0205 or via e-mail at Russell.Arrighi@nrc.gov within 10 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation; EA-11-254" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

The purpose of the PEC would be to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference would provide an opportunity for you to give your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. A PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken.

The NRC's Enforcement Policy permits the employee who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, that employee would be invited to attend the PEC and may participate by observing the conference. Following your presentation, he/she may, if desired, present his/her views on why he/she believes the discrimination occurred and comment on your presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you or the employee to cross-examine or question each other.

In lieu of a PEC, ABSG Consulting Inc. may request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a third party neutral. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and ABSG Consulting Inc.) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Enclosed is a redacted copy of OI Report Number 1-2010-050. The OI report provides an overview of the evidence gathered during this investigation. Portions of the OI report have been redacted, but the substantive issues related to this case remain. The OI report is only being provided to you at this time. After a full review of the circumstances, the NRC may conclude that no enforcement action is warranted. Therefore, we request that you not make the OI report available to the general public. If a PEC is held, the other PEC participants will be sent a copy of the redacted OI report.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, without the enclosures, and your response (if you choose to provide one) 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 it can be made available to the Public without redaction.

Sincerely,

/RA/

Roy Zimmerman, Director
Office of Enforcement

Enclosures:

1. Redacted Copy of the Office of Investigations Report No. 1-2010-050
(EXEMPT FROM PUBLIC DISCLOSURE)
2. NUREG/BR-0317 Post-Investigation ADR Program

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/RA/

Roy Zimmerman, Director
Office of Enforcement

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cc w/out encl:

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DATE	12/08/2011	12/08/2011	01/11/2012	01/04/2012	01/17/2012

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Enclosure 1

Redacted Copy of the Office of Investigations Report No. 1-2010-050

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ABSG Consulting Inc.

Enclosure 2

NUREG/BR-0317 Post-Investigation ADR Program