

NUCLEAR REGULATORY COMMISSION

NRC-2012-0094]

In the Matter of)

ABSG Consulting Inc.)

EA-11-254

**CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)**

I

ABSG Consulting Inc. (ABSG) is an independently owned and operated risk, safety, and integrity management company serving various industries in the United States and overseas; some of which are regulated by the U.S. Nuclear Regulatory Commission (NRC). ABSG's main office is located in Houston, TX.

This Confirmatory Order (referenced as CO, Confirmatory Order or Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 12, 2012, in Arlington VA.

II

On October 5, 2011, the NRC's Office of Investigations (OI) issued its report of investigation (OI Report No. 1-2010-050). Based upon evidence developed during its investigation, the NRC identified an apparent violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee protection," involving a former ABSG employee who

was terminated, in part, for participating in a Commission proceeding before the NRC Atomic Safety and Licensing Board Panel prior to his employment with ABSG.

By letter dated January 17, 2012, the NRC identified to ABSG the apparent violation of 10 CFR 50.7 and offered ABSG the opportunity to provide a response in writing, attend a pre-decisional enforcement conference, or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and ABSG, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. ABSG chose to participate in ADR in an effort to resolve this matter.

On March 12, 2012, the NRC and ABSG met at ABSG's facility in Arlington, Virginia in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

The NRC acknowledges that ABSG on its own initiative undertook several actions.

These actions included:

1. Issuance of a letter to the manager involved with the termination of the employment of the individual reiterating ABSG's commitment to its non-retaliation policies;
2. Directing ABSG's HR Manager of Employee Relations to draft an expanded anti-retaliation policy for inclusion in the Company's Policies and Benefits Guide; and
3. Directing ABSG's Director of Compliance to draft an expanded anti-retaliation policy for inclusion in the Company's Code of Ethics.

During the ADR mediation session, an agreement in principle was reached in which ABSG agreed to take the following additional actions:

1. The President of ABSG shall issue a communication in writing to those employees involved in its U.S. Nuclear Utilities Market Sector informing them of the Company's policy and their right and avenues for raising nuclear safety concerns without fear of retaliation. This communication shall also be provided to all new hire employees within thirty days of their assumption of duties. All employees to whom this communication is given shall confirm their receipt in writing.

2. ABSG shall hire an outside consultant with expertise in NRC employee protection regulations to develop anti-retaliation training for all ABSG U.S. Nuclear Utilities Market Sector employees which shall include those items identified in 10 CFR 50.7, "Employee protection." Training shall:
 - a. Inform managers that it is the position of the NRC that ABSG is subject to 10 CFR 50.7.
 - b. Define key terms and include examples of discriminatory practices that address all categories of protected activities listed in 10 CFR 50.7.
 - c. Inform employees of their rights and avenues for raising nuclear safety concerns (including to the NRC) without fear of retaliation.

3. The anti-retaliation training, developed in paragraph 2 above, shall be conducted by an outside consultant with expertise in NRC employee protection regulations.
 - a. The training shall be provided every two years commencing within two months after development.
 - b. The training, after its first offering may be provided by ABSG training staff.

- c. Training records shall be retained consistent with applicable ABSG record retention policies.

4. ABSG shall establish a process to conduct a secondary review of all proposed adverse actions (including written reprimand or above, but excluding reductions-in-force and other ordinary layoffs) for any of its U.S. Nuclear Utilities Market Sector employees who have engaged in protected activities to ensure that these actions comport with applicable employee-protection requirements and assess and mitigate the potential for any chilling effect on such protected activities.
 - a. ABSG shall establish requirements for this process in an ABSG procedure that shall become effective thereafter.
 - b. This review shall be conducted by management personnel, including legal and/or human resources.

5. ABSG shall publish, as part of its on-line newsletter, an article concerning the protections afforded by 10 CFR 50.7.

On April 17, 2012, ABSG consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. ABSG further agreed in its April 17, 2012, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing.

The NRC has concluded that its concerns can be resolved through effective implementation of ABSG's commitments. I find that ABSG's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that ABSG's commitments be confirmed by this Order. Based

on the above and ABSG's consent, this Order is immediately effective upon issuance. Accordingly, the staff is exercising its enforcement discretion and will not issue a Notice of Violation or civil penalty in this matter.

IV

Accordingly, pursuant to Sections 103, 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 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. By no later than three months after issuance of the Confirmatory Order, the President of ABSG shall issue a communication in writing to those employees involved in its U.S. Nuclear Utilities Market Sector informing them of the Company's policy and their right and avenues for raising nuclear safety concerns without fear of retaliation. A copy of this communication shall be provided to the NRC shortly after issuance. This communication shall also be provided to all new hire employees within thirty days of their assumption of duties. All employees to whom this communication is given shall confirm their receipt in writing.

2. Within one year of the date of the Confirmatory Order, ABSG shall hire an outside consultant with expertise in NRC employee protection regulations to develop anti-retaliation training for all ABSG U.S. Nuclear Utilities Market Sector employees which shall include those items identified in 10 CFR 50.7, "Employee protection." Training shall:
 - a. Inform managers that it is the position of the NRC that ABSG is subject to 10 CFR 50.7.

- b. Define key terms and include examples of discriminatory practices that address all categories of protected activities listed in 10 CFR 50.7.
 - c. Inform employees of their rights and avenues for raising nuclear safety concerns (including to the NRC) without fear of retaliation.
3. The anti-retaliation training, developed in paragraph 2 above, shall be conducted by an outside consultant with expertise in NRC employee protection regulations.
 - a. The training shall be provided every two years commencing within two months after development.
 - b. The training, after its first offering may be provided by ABSG training staff.
 - c. Training records shall be retained consistent with applicable ABSG record retention policies and made available to the NRC upon request.
4. ABSG shall establish a process to conduct a secondary review of all proposed adverse actions (including written reprimand or above, but excluding reductions-in-force and other ordinary layoffs) for any of its U.S. Nuclear Utilities Market Sector employees who have engaged in protected activities to ensure these actions comport with applicable employee-protection requirements and assess and mitigate the potential for any chilling effect on such protected activities.
 - a. Within 3 months after issuance of this Confirmatory Order, ABSG shall establish requirements for this process in an ABSG procedure that shall become effective thereafter.
 - b. This review shall be conducted by management personnel, including legal and/or human resources.

5. Within 6 months of the issuance of the Confirmatory Order, ABSG shall publish, as part of its on-line newsletter, an article concerning the protections afforded by 10 CFR 50.7 and provide a copy to the NRC shortly after publication.

V

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than ABSG, may request a hearing within 20 days of its publication in the *Federal Register*. 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, DC 20555, and include a statement of good cause for the extension.

All documents filed in the NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request: (1) a digital

identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1- (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

If a person (other than ABSG) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by 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 Confirmatory 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 this Confirmatory Order is published in the *Federal Register*, 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.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 17 day of April 2012

/RA/

Roy P. Zimmerman,

Director, Office of Enforcement