

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0115]

In the Matter of

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Jaime Sánchez

IA-11-036

**Order Prohibiting Involvement in
NRC-Licensed Activities**

I

Jaime Sánchez (Mr. Sánchez) is President of S&R Engineering (S&R, licensee) in San Juan, Puerto Rico. S&R held License No. 52-30913-01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30 on June 21, 2004. The license authorized the possession, storage, and use of licensed nuclear material in portable gauges to measure the physical properties of materials in accordance with the conditions specified therein. On October 29, 2009, the NRC issued an Order to S&R due to S&R's failure to pay its license fees. The Order prohibited S&R from using its licensed radioactive material (one portable moisture density gauge containing a cesium-137 sealed source and an americium-241 sealed source), and indicated that if S&R failed to pay the fee within the required 30 days, S&R was required to dispose of or transfer the gauge to an authorized recipient within 60 days (by December 29, 2009) and to notify the NRC in writing of the disposition of the gauge. S&R did not pay the license fee, and did not notify the NRC that it had dispositioned the gauge.

II

In a letter dated August 1, 2011, the NRC provided to Mr. Sánchez the results of an investigation initiated by the NRC's Office of Investigations (OI). The letter informed Mr. Sánchez that the NRC was considering escalated enforcement action against him for an apparent violation of 10 CFR 30.10(a)(2), due to his deliberate submittal to the NRC of information that he knew to be incomplete or inaccurate in some respect material to the NRC during a telephone conversation on August 3, 2010. Specifically, the NRC determined that during the telephone call, Mr. Sánchez deliberately informed an NRC inspector that S&R had transferred its gauge to an authorized recipient when, in fact, S&R remained in possession of the gauge.

In a separate letter dated August 1, 2011, the NRC informed Mr. Sánchez that the NRC was also considering escalated enforcement action against his company (S&R) for violations of NRC requirements including: (1) providing information to the NRC that is not complete and accurate in all material respects as required by 10 CFR 30.9(a); (2) failing to comply with or respond to an NRC Order as required by 10 CFR 2.202(b) regarding either payment of the licensing fee or properly disposing of or transferring the gauge; (3) failing to afford the NRC the opportunity to inspect materials, activities, and records under the regulations as required by 10 CFR 19.14(a); and (4) failing to use a minimum of two independent controls that form tangible barriers to secure S&R's portable gauge from unauthorized removal, when the portable gauge was not under S&R's direct control and constant surveillance, as required by 10 CFR 30.34(i).

In those letters, the NRC offered S&R and Mr. Sánchez a choice to attend a Pre-decisional Enforcement Conference (PEC) or to request Alternative Dispute Resolution (ADR) to resolve any disagreement over: (1) whether the violations occurred; and (2) the appropriate enforcement action. However, Mr. Sánchez did not respond to either letter or to the NRC staff's subsequent communication attempts.

III

Consequently, on January 13, 2012, the NRC issued to S&R a Notice of Violation and Proposed Imposition of Civil Penalty (CP) in the amount of \$14,000, and notification that the NRC would potentially impose additional daily CPs if S&R did not transfer the gauge to an authorized recipient within 30 days from the date of the letter. In that letter, the NRC also informed S&R that the NRC would forgo imposition of any CPs if S&R appropriately transferred its portable gauge to an authorized recipient within 30 days from the date of the letter. The NRC has verified that S&R appropriately transferred the gauge to Earth Engineers, Inc. within the required timeframe. Accordingly, on the date of this Order, the NRC informed S&R that the NRC would not impose any CPs in association with the violations attributed to the company, and that S&R's NRC license has been terminated.

Separately, the NRC has concluded that Mr. Sánchez violated 10 CFR 30.10(a)(2) by deliberately submitting to the NRC information that he knew to be inaccurate in some respect material to the NRC, when, during the aforementioned telephone conversation on August 3, 2010, Mr. Sánchez deliberately informed an NRC inspector that S&R had transferred its gauge to an authorized recipient when, in fact, S&R remained in possession of the gauge. Mr. Sánchez's actions resulted in the NRC being uninformed as to the location of licensed

material and, for a time, being precluded from inspecting the safe use and storage of that material. Mr. Sánchez's misrepresentation to the NRC (particularly, given his position as the President of S&R Engineering), and his failure to address or correct the misinformation, have raised serious doubts as to whether he can be relied upon to comply with the NRC requirements and to provide complete and accurate information to the NRC.

As a result, I do not have the necessary assurance that: Mr. Sánchez, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with the NRC requirements; and that the health and safety of the public will be protected if Mr. Sánchez were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety, and interest require that Mr. Sánchez be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

1. Jaime Sánchez is prohibited for 5 years from the date of this Order from engaging in any 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 Jaime Sánchez 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. Jaime Sánchez shall, within 20 days following acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice 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 to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In the notification, Jaime Sánchez shall include a statement of his commitment to comply with the NRC's regulatory requirements and why the Commission should have confidence that he will now comply with applicable NRC requirements, and be complete and accurate in all communications with the NRC.

The Director, OE, may relax or rescind any of the above conditions upon demonstration by Jaime Sánchez of good cause.

V

In accordance with 10 CFR 2.202, Mr. Sánchez must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its publication in the *Federal Register*. In addition, Mr. Sánchez and any other person adversely affected by this

Order may request a hearing on this Order within 30 days of its publication in the *Federal Register*. 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.

All documents filed in the NRC adjudicatory proceedings, including a request for a 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 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 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email 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 certificate). Based on 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 the 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 a 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 document 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 thorough the "Contact Us" link located on the NRC's 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 extension 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, MD 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 using 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 submissions.

If a person other than Mr. Sánchez 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 CFR 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 30 days from the date this 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.

For The Nuclear Regulatory Commission

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

/RA/

Roy P. Zimmerman
Director, Office of Enforcement