



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

August 10, 2012

IA-12-028

Mr. Bradley Berg
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION – NRC INVESTIGATION REPORT NO. 4-2011-031

Dear Mr. Berg,

This letter refers to the investigation completed by the NRC's Office of Investigations (OI), Region IV, on February 13, 2012, regarding your activities at a temporary job site near Rock Springs, Wyoming, while employed by Quality Inspection & Testing, Inc. (QIT), as a radiographer's assistant. Specifically, the investigation reviewed events that took place during an October 27, 2010, NRC inspection at the temporary job site where you were assisting a radiographer during radiographic operations. Although not the primary purpose of the investigation, OI did review whether you, as a radiographer's assistant, deliberately failed to (1) maintain direct control and constant surveillance of a radiographic exposure device at a temporary job site as required by 10 CFR 20.1802, and (2) wear personnel monitoring equipment during radiographic operations, as required by 10 CFR 34.47(a). A factual summary of the investigation, as it pertains to your actions, was issued as an enclosure to our letter dated June 5, 2012 (ML12160A027).

In the letter transmitting the factual summary, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference (PEC) or by requesting Alternative Dispute Resolution (ADR). In addition, we attempted to telephone you several times to discuss this matter, and Mr. Michael Vasquez, of my staff, left you several messages. You did not respond to these calls. As a result, we sent you another letter on June 25, 2012 (ML12177A337), informing you that the NRC was considering enforcement action against you and that your input regarding the apparent violations was important to us. On June 28, 2012, you contacted Mr. Vasquez and he explained the apparent violation and your options of attending a PEC or requesting ADR. Mr. Vasquez also informed you that you are not required to meet with the NRC, but should you decide not to meet with us, we would make an enforcement decision with the available information. During the June 28th conversation, you committed to contact Mr. Vasquez on Monday, July 2, 2012, with your decision regarding how you wanted to address potential enforcement action against you. When Mr. Vasquez had not heard from you by July 9, 2012, he left another message informing you that if you did not contact us by July 10, 2012, the NRC would proceed with our

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enforcement decision. Because of the multiple attempts to contact you regarding your decision on how to address the apparent violation and your failure to reply and inform us of your wishes, the NRC is proceeding with its enforcement decision based on the results of the OI investigation.

Based on the information developed during the investigation, the NRC determined that two deliberate violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) (Enclosure 1). Since your actions were deliberate, you violated the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10. The NRC's deliberate misconduct rule prohibits an employee of a licensee from engaging in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation or order; or any term, condition or limitation of any NRC license. When operating in Wyoming, QIT, an Agreement State licensee (State of Louisiana Radioactive Materials License LA-11238-L01), was conducting activities under an NRC general license pursuant to 10 CFR 150.20, Recognition of Agreement State licenses.

You engaged in deliberate misconduct by deliberately failing to comply with NRC security requirements and to wear required personnel monitoring equipment during radiographic operations. Specifically, on October 27, 2010, you failed to maintain direct control and constant surveillance of a radiographic exposure device and you did not wear any of the required personnel monitoring equipment while conducting radiographic operations at a temporary job site near Rock Springs, Wyoming. Your deliberate actions placed QIT in violation of 10 CFR 20.1802 and 10 CFR 34.47(a). A copy of the publically available version of the enforcement action issued to QIT is enclosed (Enclosure 2).

After considering the significance of the violations, and the deliberate nature of your actions, the NRC has categorized these violations at Severity Level III, in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement or criminal action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management 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. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Because this letter references and encloses information addressing NRC's review of an enforcement action against an individual, this letter and its enclosures 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's Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

In addition, you should be aware that all final NRC documents, including the final investigation report, are official agency records, and may be made available to the public under the Freedom of Information Act, subject to redaction of certain information in accordance with the Freedom of Information Act.

Instead of providing a response, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must also be made within 30 days of the issuance date of the Notice. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317, Revision 1) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral. Please contact the Institute on Conflict Resolution at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through the ADR program.

Should you have any questions concerning this matter, please contact Ms. Christi Maier of my staff at (817) 200-1217.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Enclosures:

1. Notice of Violation
2. Publically available version of the Enforcement Action issued to Quality Inspection & Testing, Inc., dated August 10, 2012
3. NUREG/BR-0317, Rev. 1, Alternative Dispute Resolution

Mr. Bradley Berg

- 4 -

bcc w/enclosure 1 (via E-mail):

OEMail Resource;

Elmo.Collins@nrc.gov; Heather.Gepford@nrc.gov; Roy.Zimmerman@nrc.gov;
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Anton.Vegel@nrc.gov; Christi.Maier@nrc.gov; John.Wray@nrc.gov;
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Jack.Whitten@nrc.gov; Bill.Maier@nrc.gov; Leelavathi.Sreenivas@nrc.gov;
Blair.Spitzberg@nrc.gov; Kerstun.Day@nrc.gov; Lauren.Casey@nrc.gov;
Michael.Vasquez@nrc.gov; Victor.Dricks@nrc.gov; Carolyn.Faria-Ocasio@nrc.gov;
Randy.Erickson@nrc.gov; Lara.Uselding@nrc.gov; Michele.Burgess@nrc.gov;
Latischa.Hanson@nrc.gov; Rachel.Browder@nrc.gov; Marcia.Simon@nrc.gov;
Marisa.Herrera@nrc.gov; John.Oglesby@nrc.gov; Martha.Poston-Brown@nrc.gov;
R4ALLEGATION.resource@nrc.gov;
RIV ETA (Silas.Kennedy@nrc.gov)

bcc hard copy:

RIV Materials Docket File (5th Floor)

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ADAMS

ADAMS: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		x SUNSI Review Complete		Reviewer Initials: LMH
		x Publicly Available		x Non-Sensitive
Category A.3		x Non-publicly Available		x Sensitive
KEYWORD: A.3 A.5 Choice Letter EA-11-124 Availability changed to Public 4/4/2013				
RIV:NMSB-A	C:NMSB-A	ACES	RC	C: ACES
LHanson	MVasquez	CMaier	KFuller	HGepford
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07/24/2012	07/24/2012	07/25/2012		07/25/2012
DD:DNMS	D:DNMS	DRA	OGC	OE
VCampbell	AVegel	ATHowell	MSimon NLO	Nick Hilton
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T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION

Mr. Bradley Berg
[HOME ADDRESS DELETED
UNDER 10CFR 2.390]

IA-12-028

During an NRC investigation completed on February 13, 2012, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below.

10 CFR 150.20(a)(1)(i) states that provided that the provisions of paragraph (b) of section 150.20 have been met, any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in Non-Agreement States.

10 CFR 150.20(b) states, in part, that general licenses provided in section 150.20 are subject to all applicable regulations of the Commission.

10 CFR 30.10(a)(1), requires, in part, that an employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation issued by the Commission.

10 CFR 30.10(c)(1) states, in part, that for the purposes of 10 CFR 30.10(a)(1), deliberate misconduct by a person means an intentional act or omission that the person knows would cause a licensee to be in violation of any regulation issued by the Commission.

- A. 10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, on October 27, 2010, Mr. Bradley Berg, a former radiographer's assistant for an NRC licensee, engaged in deliberate misconduct that caused the licensee, Quality Inspection and Testing, Inc. (QIT), to be in violation of 10 CFR 20.1802. Specifically, while conducting radiographic operations at a temporary job site, Mr. Berg deliberately failed to secure licensed material in a portable device from unauthorized removal when the device was not under his direct control or constant surveillance and the device was located in an unrestricted area.

This is a Severity Level III violation (Section 6.12)

- B. 10 CFR 34.47(a) requires, in part, that a licensee may not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter.

Contrary to the above, on October 27, 2010, Mr. Berg engaged in deliberate misconduct that caused the licensee, QIT, to be in violation of 10 CFR 34.47(a). Specifically, Mr. Berg deliberately acted as a radiographer's assistant without wearing, on the trunk of his body, a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter, at all times during radiographic operations.

This is a Severity Level III violation (Section 6.7)

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 20555-0001, with a copy to the Regional Administrator, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; IA-12-028 and should include for each violation: (1) the reason for the violation, or if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken 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 reply is not received within the time specified in the Notice, an order or a Demand for Information may be issued as to why you should not be subject to further enforcement action, such as a ban from working in NRC jurisdiction. If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington DC 20555-0001.

Because this issue involves Security-Related Information, your response will not 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>. If Security-Related Information is necessary to provide an acceptable response, please follow the instructions for withholding in 10 CFR 2.390(b)(1).