



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

April 18, 2013

IA-13-012

Mr. Armando Clavero
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(A)]

SUBJECT: RESULTS OF NRC INVESTIGATION REPORT NO. 3-2012-017

Dear Mr. Clavero:

This letter refers to an investigation completed on January 31, 2013, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) regarding operations at Bradley D. Bastow, D. O., a cardiology office where University Nuclear and Diagnostics (UND) has a contract to supply nuclear medicine technicians (NMTs) and equipment. The purpose of the OI investigation was to determine whether the employees for either Bastow or UND deliberately violated NRC requirements by failing to: 1) perform dose calibrator linearity tests and record the net activity, date and time for the dose calibrator linearity tests; 2) perform an annual review and maintain annual records; 3) calibrate survey instruments and maintain calibration records; 4) perform area surveys and maintain area survey records; and 5) perform package receipt surveys, and maintain package receipt survey records.

Based on the NRC's review of the investigation report, an apparent violation of NRC requirements has been identified and is being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy. The Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation involves your actions as the Technical Officer and co-owner of UND in: (1) deliberately directing NMTs working for UND at Bastow to not perform package receipt surveys when the survey meter and well counter were not working or not present but to record as a minimal dose of "0.02 millirem" or "background," (2) deliberately not performing inventory surveys and providing falsified records of inventory surveys on dates when there was no survey meter onsite, (3) deliberately not performing survey meter calibration and providing falsified records of survey meter calibration, and (4) not performing an annual review and providing a falsified record of an annual review containing erroneous information, including that surveys were performed when a survey meter was not onsite at Bastow. A more detailed summary of the findings of the OI report was included with the letter and report to Bastow, a copy of which is provided in Enclosure 1.

The above issues appear to be examples of an apparent violation of 10 CFR 30.10(a)(1), which prohibits contractors from engaging in deliberate misconduct that causes a licensee to be in violation of NRC regulations. A copy of 10 CFR 30.10 is provided in Enclosure 2. You can also find the other regulations mentioned in the letter to Bastow on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

Before the NRC makes its enforcement decision, we are offering you the following three choices: (1) to respond in writing to the apparent violation; (2) to meet with the NRC in a Predecisional Enforcement Conference (PEC); or (3) to meet with the NRC and a neutral

mediator in a process called Alternative Dispute Resolution (ADR). Each of these venues would provide you with an opportunity to explain why the NRC should be confident that you will follow its regulations in the future if you are engaged in NRC-licensed activities.

You must contact Mr. Steven Orth at (630) 810-4373 within ten days of the date of this letter to notify the NRC of which option you plan to use. If you decide not to choose any of these options within the time specified, the NRC will proceed with its enforcement decision, unless the NRC has granted you an extension of time.

If you provide a written response, it needs to be postmarked to the NRC within 30 days of the date of this letter. The letter should be clearly marked as "Response to an Apparent Violation, IA-13-012," and should address: (1) the reason for your actions which caused the apparent violation; (2) your understanding of why such actions were wrong; and (3) the actions that you have taken or will take to avoid further violations. If you do not agree that an apparent violation exists, please describe in your letter the reasons why you do not agree.

Your written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555. A copy of the letter should also be sent to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4351.

If you choose to attend a PEC, it will be held in the NRC office in Lisle, Illinois, normally within 30 days of the date of this letter. A PEC provides you the opportunity to provide the NRC with your response in person and will give you a chance to directly answer any NRC questions. You may have a personal representative or an attorney attend the conference with you, if you choose. Other members of the public, including representatives from UND, would not normally be permitted to attend this meeting; the NRC would describe the PEC as being "closed to public observation." However, the NRC will record and transcribe the meeting.

The third option available to you is to request ADR. This would involve a mediation session with a neutral third party or mediator. Mediation is a voluntary process in which a trained mediator works with parties to help them reach resolution. If you request to use ADR, then the NRC would work with you to select a mutually agreeable neutral mediator who has no stake in the outcome. Additional information concerning the NRC's Alternative Dispute Resolution process can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University facilitates the NRC's ADR program as a neutral third party. Please contact ICR at 607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Please be advised that the number and characterization of apparent violations may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

If the NRC concludes that you engaged in deliberate misconduct, the NRC could take several different enforcement actions. Specifically, the NRC could issue a Notice of Violation, a civil penalty¹, or an Order. An Order may prohibit involvement in NRC-licensed activities, require

1 Although the NRC can issue a civil penalty to an individual, a civil penalty is rarely imposed.

notice to the NRC before resuming involvement in NRC-licensed activities, or require other actions. Conversely, the NRC could determine that no further action was warranted.

A copy of this letter and its enclosures will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, a copy of this letter, with your home address removed, would 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>.

The NRC would also include a summary of the final enforcement action on its Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html>. In addition, this letter will be maintained by the Office of Enforcement (OE) 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 Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html> by selecting the first entry and then selecting the system of record.

You should be aware that all final NRC documents, including the final investigation report by the Office of Investigations, 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.

If you have any questions concerning this matter, please contact Mr. Steven Orth at (630) 810-4373.

Sincerely,

/RA/

Anne T. Boland, Director
Division of Nuclear Materials Safety

Enclosures:

1. Letter to Dr. B. Bastow
2. Excerpt from 10 CFR 30.10

CODE OF FEDERAL REGULATIONS

TITLE 10--ENERGY

CHAPTER I – NUCLEAR REGULATORY COMMISSION

PART 30 – RULES OF GENERAL APPLICABILITY TO DOMESTIC
LICENSING OF BYPRODUCT MATERIAL

§ 30.10 Deliberate misconduct

- (a) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in this part, may not:
 - (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or
 - (2) Deliberately submit to the NRC, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.
- (b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.
- (c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:
 - (1) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or
 - (2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

[63 FR 1896, Jan. 13, 1998]

notice to the NRC before resuming involvement in NRC-licensed activities, or require other actions. Conversely, the NRC could determine that no further action was warranted.

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If you have any questions concerning this matter, please contact Mr. Steven Orth at (630) 810-4373.

Sincerely,

/RA/

Anne T. Boland, Director
Division of Nuclear Materials Safety

Enclosures:

1. Letter to Dr. B. Bastow
2. Excerpt from 10 CFR 30.10

FILE NAME: G:\ORAI\IEICS\ENFORCEMENT\Cases\Enforcement Cases 2013\EA-13-026 University Nuclear & Diagnostics\EA-13-027 Individual Choice letter.docx

OFFICE	RIII	RIII	RIII	RIII	D: OI
NAME	Lougheed	Bloomer	Boland	Monteith	Goetz
DATE	04/08/13	04/08/13	04/09/13	04/09/13	04/09/13
OFFICE	D:OGC	D:OE	RIII	RIII	
NAME	Spencer ² Hair for	Zimmerman ³ Marenchin for	Orth	Boland	
DATE	04/11/13	04/16/13	04/17/13	04/18/13	

OFFICIAL RECORD COPY

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- 2 OGC "no legal objection" provided via e-mail from C. Hair on April 11, 2013
 - 3 OE concurrence provided via e-mail from T. Marenchin on April 16, 2013

Letter to Armando Clavero from Anne T. Boland, dated April 18, 2013

SUBJECT: RESULTS OF NRC INVESTIGATION REPORT NO. 3-2012-017

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