

December 20, 2013

IA-13-038

Joseph S. Shepherd
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: ORDER CONDITIONING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
NOTICE OF VIOLATION (NRC Office of Investigations Report No. 1-2012-040)

Dear Mr. Shepherd:

This letter refers to an investigation initiated on April 25, 2012, by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The purpose of the investigation was to determine if you deliberately violated requirements set forth in NRC Order IA-08-014 (ADAMS Accession No. ML081900241). The NRC issued that Order to you on September 8, 2008, after we determined that, while working as a contractor for an NRC licensee, you deliberately provided materially inaccurate information regarding inspections of Type B shipping casks to that licensee, causing the licensee to be in violation of NRC requirements. The Order, in part, required that, for a period of 5 years from the date of the Order, you notify customers of the Order, make the Order available for their review, and notify the NRC no less than 5 business days before conducting licensed activities within NRC jurisdiction.

On April 13, 2012, the NRC conducted an inspection of your activities on a self-shielded irradiator while you were working under reciprocity in NRC jurisdiction at the Uniformed Services University of the Health Sciences (USU), in Bethesda, Maryland. During the inspection, you acknowledged to the NRC inspector that, prior to beginning work that day, you failed to notify USU of the Order issued to you and did not make the Order available to them. The NRC's Office of Investigations (OI) subsequently conducted an investigation to determine whether you willfully failed to notify USU about the Order and make the Order available for their review.

In a letter dated August 15, 2013, the NRC provided you a factual summary of OI's investigative report. We also informed you that the NRC had concluded that an apparent violation occurred. The NRC further informed you that we were considering escalated enforcement action for this apparent violation. We offered you the opportunity to discuss the apparent violation during a predecisional enforcement conference (PEC) or to engage the NRC in an alternative dispute resolution (ADR) session.

At your request, a PEC was held on September 25, 2013, in the NRC's Region I office. During the PEC, you acknowledged that you failed to notify USU of NRC Order IA-08-014 prior to performing work for them, thereby violating Section V of the Order. You stated that your failure to notify USU of the Order was the result of a mistake, because you thought USU was under military and not NRC jurisdiction. A summary of the conference is enclosed (Enclosure 1).

Based on the above, the NRC has determined that you violated NRC Order IA-08-014. The NRC has categorized the violation at Severity Level (SL) III, in accordance with the NRC Enforcement Policy. The violation is set forth in the enclosed Notice of Violation (Enclosure 2).

In the September 8, 2008, letter accompanying NRC Order IA-08-014, the NRC informed you that additional enforcement action could be taken if you violated any provision of the Order. In determining the appropriate enforcement action for the current violation, the NRC considered issuing a civil penalty and an additional ban from all licensed activities. However, the NRC took into consideration that your violation of the 2008 Order appears to be an isolated incident and to have resulted from careless disregard of applicable requirements, rather than deliberate misconduct. Furthermore, the NRC considered that the project on which you were working was originally a joint venture and that you became the primary contractor on the project at the last minute, potentially contributing to your failure to verify the jurisdictional status of USU.

Rather than issue a civil penalty or a ban from all licensed activities, the NRC has decided to issue you the enclosed Order (Enclosure 3). The new Order reinstates certain requirements of the prior order that expired on September 8, 2013. The new Order also contains more detailed requirements that will enhance public health and safety and help prevent future violations.

Under the new Order, you must determine whether your customer is under NRC jurisdiction, document your determination, and state the basis for your determination. You must also notify the NRC no less than 5 business days before conducting licensed activities within NRC jurisdiction. In addition, you must notify customers of both the September 8, 2008, Order (IA-08-014) and this Order and make the orders available for the customers to review. If you change employers, you must provide any future employer a copy of the Orders. All these provisions will remain in effect for 3 years from the effective date of this Order, with one exception. The requirement that you maintain documentation of your jurisdictional determinations under this Order will extend for 4 years from the effective date of this Order, so that the NRC can review your compliance with the Order.

Because the NRC is issuing a new Order to you, rather than modifying the prior Order (IA-08-014), all provisions in the prior Order that are currently in effect will remain in effect. In particular, the provision in the prior Order indefinitely prohibiting your involvement with shipments of Type B quantities of licensed material remains unchanged.

In accordance with 10 CFR 2.202, you must provide a written answer to the enclosed (new) Order in writing, and under oath or affirmation, within 20 days of issuance. In addition, you or any other person adversely affected by this Order may request a hearing within 30 days of issuance.

You must also respond in writing to the attached Notice of Violation. Please follow the instructions in the Notice of Violation and in Section V of the new Order when preparing your response. Although you provided information during the PEC regarding corrective actions you have taken, including a revised pre-job checklist for notifying the customer of Order IA-08-014, the NRC has determined that additional information is needed. In particular, in your response you should discuss your planned corrective actions for determining the jurisdictional status of facilities where you work, including military facilities.

Because you must respond to both the enclosed Order and Notice of Violation, you may submit one response to satisfy both requirements. As stated above, your response must be received within 20 days of issuance. The NRC will use your response, in part, to evaluate the appropriateness of the enforcement action as well as whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Pursuant to Section 223 of the Atomic Energy Act of 1954, if you violate, attempt to violate, or conspire to violate, any provision of this Order, you shall be subject to criminal prosecution as set forth in that section. Additionally, the NRC will consider a civil penalty for any future violation of this Order.

Instead of providing a response to the Order, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must be made within 20 days of issuance. 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) 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 the NRC's program as an intake neutral. Please contact the Institute on Conflict Resolution at (877) 733-9415 if you are interested in pursuing resolution of this issue through the ADR program.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 related to 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>.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Enclosures:

1. Joseph S. Shepherd Predecisional Enforcement Conference Summary
2. Notice of Violation
3. Order IA-13-038
4. NUREG/BR-0317

cc w/ Enclosures: State of California

CERTIFIED MAIL
RETURN RECEIPT REQUEST

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R. Sun, FSME

Enforcement Coordinators

RII, RIII, RIV (C Evans; S Orth; H. Gepford)

H. Bell, OIG

C. McCrary, OI

J. Teator, OI

C. Scott, OGC

M. Williams, OCFO

S. Titherington-Buda, OCFO

W. Dean, RA, RI

D. Lew, DRA, RI

D. Screnci, PAO-RI / N Sheehan, PAO-RI

J. Clifford, DNMS, RI

D. Collins, DNMS, RI

B. Welling, DNMS, RI

C. Gordon, DNMS, RI

D. Janda, SAO-RI / M Ford, SAO-RI

E. Monteith, RI

D. Holody, RI

M. McLaughlin, RI

C. Crisden, RI

B. Bickett, RI

D. Bearde, RI

S. Villar, RI

R1DNMSMailResource

Region I OE Files (with concurrences)

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Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Enclosures:

1. Joseph S. Shepherd Predecisional Enforcement Conference Summary
2. Notice of Violation
3. Order IA-13-038
4. NUREG/BR-0317

cc w/ Enclosures: State of California

CERTIFIED MAIL

RETURN RECEIPT REQUEST

*See previous concurrence

OFFICE	RI/ORA	RI/DNMS	RI/DNMS	RI/ORA	RI/ORA	RI/OI
NAME	CCrisden/CJC*	BWelling/BW*	JClifford/JWC w/comment*	LClark/LC*	DHolody/DJH*	JTeator/JAT*
DATE	10/31/13	10/31/13	11/5/13	11/6/13	11/6/13	11/7/13
OFFICE	RI/RA	HQ/OE	HQ/FSME	HQ/OGC	HQ/OE:D	
NAME	WDean/DCL for*	NHilton	MBurgess	MClark	RZimmerman	
DATE	11/19/13	12/20/13	12/17/2013	12/19/2013	12/20/2013	

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ENCLOSURE 1

PREDECISIONAL ENFORCEMENT CONFERENCE SUMMARY

Joseph S. Shepherd
NRC Inspection Report No. 15000004/2012001

On September 25, 2013, Mr. Joseph S. Shepherd, President and Owner, Foss Therapy Services, Inc. (FTS), met with NRC management in the NRC Region I, King of Prussia, PA office. The meeting was held to discuss an apparent violation identified during an inspection conducted on April 13, 2012, at the Uniformed Services University of the Health Sciences (USU), Bethesda, MD. The apparent violation being considered for escalated enforcement involved Mr. Shepherd's willful failure to adhere to the requirements of NRC Order IA-08-014, issued September 8, 2008. Specifically, Mr. Shepherd failed to notify his customer that an Order was issued to him and to make it available prior to conducting licensed activities. Based on the results of an OI investigation (OI Case Number 1-2012-040), the NRC determined that Mr. Shepherd acted in careless disregard of the requirements of the Order.

Mr. James Clifford, Director, Division of Nuclear Materials Safety, provided opening remarks and described the purpose and NRC policy related to the predecisional enforcement conference. Cherie Crisden, NRC Region I Enforcement Specialist, described the NRC Enforcement Policy and process. Blake Welling, Branch Chief, provided a summary of the investigation results and reviewed the apparent violation resulting from the Office of Investigations report.

Mr. Shepherd acknowledged the apparent violation and the failure to provide notification to USU prior to performing work as required by the Order, indicating that he had made a mistake. Following NRC questions about the USU notification, Mr. Shepherd stated that his corrective actions included revising the procedure used to notify future customers and the NRC. A copy of the revised procedure was provided. Mr. Shepherd also presented a copy of a work package used after the USU inspection which utilized the revised procedure to notify a NRC-licensed facility. The NRC staff indicated the information would be reviewed and considered in the enforcement decision.

The NRC staff raised questions as to how Mr. Shepherd ensured the Order requirements were met for customer notifications of proposed work at military (federal) installations when a request for reciprocity was filed with the NRC. The staff emphasized that an inconsistent practice had been identified which led to the NRC investigation and finding of careless disregard. Mr. Shepherd explained how the revised procedure (job checklist) addressed the issue, and described recent company notification practices. Following an NRC caucus, there was a brief discussion about the FTS California license condition and the method used to determine exclusive federal jurisdiction. Mr. Clifford thanked Mr. Shepherd for his attendance and indicated he would be informed of the final NRC action after the results of the predecisional enforcement conference were reviewed.

LIST OF PERSONS ATTENDING

NRC Staff:

James Clifford, Director, Division of Nuclear Materials Safety (DNMS)
John Farrington, Acting Regional Counsel, Office of the Regional Administrator (ORA)
Blake Welling, Chief, Materials Security & Industrial Branch, DNMS
Craig Gordon, Senior Health Physicist, Materials Security & Industrial Branch, DNMS
Cherie Crisden, Enforcement Specialist, ORA
Michele Burgess, Sr. Regional Coordinator, Office of Federal and State Materials and
Environmental Management Programs (FSME)
Robert Sun, Project Manager, FSME
Nicole Coleman, Enforcement Specialist, Office of Enforcement

Foss Therapy Services, Inc. Representative:

Joseph Shepherd, President and Owner

ENCLOSURE 2

NOTICE OF VIOLATION

Joseph S. Shepherd
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-13-038

During an NRC inspection conducted on April 13, 2012, and an investigation by the NRC Office of Investigations (OI) between April 25, 2012, and March 22, 2013, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

NRC Order Prohibiting Involvement in 10 CFR Part 71 Activities and Conditioning Other NRC Licensed Activities, IA-08-014, dated September 8, 2008, requires, in part, that prior to conducting licensed activities in NRC jurisdiction, Mr. Joseph S. Shepherd shall notify customers that the NRC has issued the Order to him and shall also make the Order available to customers. The notifications shall be made for a period of five years from the date of the Order.

Contrary to the above, on April 13, 2012, Mr. Shepherd conducted licensed activities in NRC jurisdiction at Uniformed Services University of the Health Sciences (USU) located in Bethesda, Maryland, without notifying USU that the NRC had issued him an Order and without making the Order available to USU.

This is a Severity Level III violation. (Section 6.9)

Under 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 2100 Renaissance Blvd, King of Prussia, PA 19406, with a copy to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; You should mark your response as "Reply to a Notice of Violation and Order; IA-13-038" and "Open by Addressee Only." You must send this reply to the addressees listed above within 20 days of the date of the letter transmitting this Notice of Violation (Notice). Where good cause is shown, consideration will be given to extending the response time.

In your reply, you must address (1) the reason for the violation, or, if contested, the basis for disputing the 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. If the NRC does not receive an adequate written reply within the time specified in this Notice, an Order or a Demand for Information may be issued requiring you to explain why additional enforcement action should not be taken.

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.

Your response 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> . Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter 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 Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html> .

Dated this 20 day of December 2013

Enclosure 3
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Joseph S. Shepherd
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

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IA-13-038

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ORDER CONDITIONING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Joseph S. Shepherd is the President and Owner of Foss Therapy Services, Incorporated (FTS) in North Hollywood, California. FTS does not possess a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. However, FTS is the holder of a State of California materials license, which authorizes the use of radioactive material for the maintenance, repair, and installation of self-shielded irradiators. The holder of a State license may perform work authorized by the license in other state or federal jurisdictions provided the State licensee files for reciprocity with the appropriate regulatory authority.

On September 8, 2008, the NRC issued Mr. Shepherd an Order, "Order Prohibiting Involvement in 10 CFR Part 71 Activities and Conditioning Other NRC Licensed Activities" (IA-08-014). The NRC issued the Order to Mr. Shepherd after he committed multiple violations of 10 CFR 110.7b, "Deliberate Misconduct." These violations arose out of Mr. Shepherd's employment by Source Production and Equipment Company, Inc. (SPEC), of St. Rose,

Louisiana. SPEC, an NRC licensee, hired Mr. Shepherd to perform certain maintenance inspections required by the NRC Certificate of Compliance for Model No. 5979 shipping casks prior to shipping NRC-licensed radioactive material to Mexico. The NRC determined through inspection and an investigation that, on three separate occasions, Mr. Shepherd deliberately provided materially inaccurate information to SPEC concerning the inspection of Model No. 5979 packages. Mr. Shepherd provided the inaccurate information in various documents, such as checklists and bills of lading. By deliberately providing materially inaccurate information, Mr. Shepherd caused SPEC to violate 10 CFR 71.3, "Requirement for License" and 10 CFR 71.17m "General License; NRC-approved package." For that reason, Mr. Shepherd's actions violated 10 CFR 110.7b, "Deliberate Misconduct."

The September 8, 2008, NRC Order, in part, prohibited Mr. Shepherd indefinitely from packaging any Type B shipments and from preparing any paperwork for a Type B shipment in any area of NRC jurisdiction. The Order required Mr. Shepherd to notify the NRC in writing at least 5 business days before conducting licensed activities in NRC jurisdiction, a condition designed to facilitate NRC inspection of Mr. Shepherd's activities. The Order also required that, prior to conducting licensed activities in NRC jurisdiction, Mr. Shepherd notify the customer, that the NRC had issued the Order to him and make the Order available to the customer. These notifications were required for a period of 5 years from the date of the September 8, 2008, Order; that is, until September 8, 2013.

II

In early 2012, the Uniformed Services University of the Health Sciences (USU) in

Bethesda, Maryland hired FTS to remove a Mark I Model 68A irradiator from a facility in North Carolina and install the irradiator at USU. Although USU is affiliated with the United States military services, it is under NRC jurisdiction. FTS's contract with USU originally involved a joint venture with another company, but FTS became the sole contractor after the other company was unable to fulfill the contract. On April 4, 2012, FTS submitted to the NRC's Region IV an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." With this form, FTS provided notification of their intent to conduct work at USU under reciprocity; that is, under FTS's California license.

On April 13, 2012, the NRC inspected FTS's work on the self-shielded irradiator at USU. After observing the activities of the day and watching FTS finish loading radioactive sources into USU's irradiator, an NRC inspector interviewed Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him. Mr. Shepherd acknowledged that he had not notified USU of the Order and that he had not made the Order available to USU.

On April 25, 2012, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Shepherd willfully failed to adhere to the conditions of his Order when he worked at USU without notifying the USU of the Order issued to him and without making the Order available to USU. Based on OI's investigation, the NRC finds that Mr. Shepherd willfully violated the Order, in careless disregard of its requirements. Specifically, the NRC finds that Mr. Shepherd willfully failed to notify USU of the Order issued to him and willfully failed to make the Order available to USU prior to performing work at the facility. Although Mr. Shepherd has stated that he believed the Order's notification requirements did not apply to his work at USU

because USU was under military jurisdiction, rather than NRC jurisdiction, Mr. Shepherd knew that belief may have been incorrect, yet failed to verify USU's jurisdictional status. For example, Mr. Shepherd acknowledged that prior to working at USU he reviewed USU's NRC license, a document that states "U.S. Nuclear Regulatory Commission Materials License" at the top of the first page. Mr. Shepherd also submitted a Form 241 to the NRC, an action that would not have been required had USU not been under NRC jurisdiction.

In a letter dated August 15, 2013, the NRC informed Mr. Shepherd that the NRC was considering escalated enforcement action against him for an apparent violation of the NRC Order issued to him on September 8, 2008. In the letter, the NRC offered Mr. Shepherd the opportunity to attend a Predecisional Enforcement Conference (PEC) or request Alternative Dispute Resolution (ADR). At Mr. Shepherd's request, a PEC was conducted on September 25, 2013.

During the PEC, Mr. Shepherd acknowledged the apparent violation and the failure to provide notification to USU prior to performing work as required by the Order, indicating that he made a mistake. Mr. Shepherd also acknowledged that he would not have otherwise notified USU if he had not discussed the required notification with the NRC inspector during the inspection because he thought USU was under military jurisdiction and not NRC jurisdiction.

Based on the results of the inspection, the OI investigation, and the information provided during the PEC, the NRC finds that Mr. Shepherd willfully, in careless disregard, violated the conditions of the 2008 NRC Order against him because, prior to conducting work at the facility, Mr. Shepherd failed to notify USU of the Order issued to him and failed to make

the Order available to USU. In sum, the NRC finds that Mr. Shepherd's actions constitute a violation of NRC requirements.

III

The NRC must be able to rely on licensees, their contractors, and their employees to comply with NRC requirements. Mr. Shepherd is currently prohibited from involvement in 10 CFR Part 71 activities, as set forth in the Order issued to him on September 8, 2008. This requirement of the Order remains in effect. The 2008 Order also required Mr. Shepherd to notify the NRC in writing at least 5 business days before working in NRC jurisdiction, in order to facilitate NRC inspections of his activities. In addition, the 2008 Order required that, before performing work, Mr. Shepherd notify customers that the NRC had issued an Order to him and make the Order available to customers.

Based on Mr. Shepherd's violation of the September 8, 2008, NRC Order, I lack reasonable assurance that Mr. Shepherd can be relied upon, at this time, to comply with NRC requirements. Based on the current violation, and because the notification requirements from the prior Order expired on September 8, 2013, the public health, safety, and interest require that the NRC issue Mr. Shepherd this Order. This Order requires that, before working in NRC jurisdiction, Mr. Shepherd (1) notify the NRC of his planned work and confirm that he has verified the jurisdictional status of his customer; and (2) notify the customer that the NRC has issued the September 8, 2008, NRC Order, and this Order to him and make the Orders available to the customer. These requirements will remain in effect for 3 years from the effective date of this Order. This Order also requires that Mr. Shepherd

must determine whether the customer is under NRC jurisdiction, document his determination and state the basis for his determination. This requirement will remain in effect for 3 years from the effective date of this Order. The documentation of this requirement shall be maintained for a period of 4 years from the effective date of the Order.

IV

Accordingly, pursuant to Sections 81, 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, 10 CFR Part 71, 10 CFR 110.7b, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, FROM THE EFFECTIVE DATE OF THIS ORDER:

1. For a period of 3 years, Mr. Shepherd shall notify the NRC in writing at least 5 business days before conducting licensed activities in NRC jurisdiction.
Mr. Shepherd may provide this notification electronically either by email to: R4_Reciprocity.Resource@nrc.gov, or by faxing this notification to (817) 200-1188. Mr. Shepherd may also provide this notification by mail to Regional Administrator, U. S. Nuclear Regulatory Commission, ATTN: Division of Nuclear Material Safety, 1600 East Lamar Blvd, Arlington, TX 76011. If this notification is provided by mail, Mr. Shepherd must ensure this notification is received by the NRC at least 5 business days before conducting licensed activities. The notification shall provide the name, location, and phone number of the customer; and it shall describe the type of work to be performed.
2. For a period of 3 years, Mr. Shepherd shall take the following actions before

working for any customer, or for any contractor of a customer, who manufactures, produces, transfers, receives, acquires, owns, possesses, or uses byproduct material. Mr. Shepherd shall: (a) determine whether the customer or its job site is under NRC jurisdiction, (b) document his determination in writing, and (c) state in writing the basis for his determination. Mr. Shepherd shall maintain this documentation for a period of 4 years from the effective date of this Order, and he shall make the documentation available for NRC inspection.

3. For a period of 3 years, before conducting licensed activities in NRC jurisdiction, Mr. Shepherd shall notify each customer in writing that the NRC has issued the September 8, 2008, Order and this Order to him, and he shall make the Orders available to the customer. Mr. Shepherd shall maintain copies of these notifications for 4 years from the effective date of this Order, and he shall make the copies available for NRC inspection.
4. Mr. Shepherd is currently employed by Foss Therapy Services. Should Mr. Shepherd seek other employment involving NRC-regulated activities within 3 years from the effective date of this Order, before accepting employment he shall provide the employer a copy of both this Order and the September 8, 2008 Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Joseph S. Shepherd of good cause.

Issuance of this Order does not alter the provisions in the September 8, 2008, Order issued to Mr. Shepherd, including the provision indefinitely prohibiting

Mr. Shepherd's involvement with shipments of Type B quantities of NRC-licensed material.

V

In accordance with 2.202, Joseph S. Shepherd must submit a written answer to this Order under oath or affirmation within 20 days of its issuance. The response shall admit or deny the charge made in the Order. Joseph S. Shepherd's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 20 days of its issuance. In addition, Joseph S. Shepherd and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

The response to this Order and the Notice shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; Regional Administrator, U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 2100 Renaissance Blvd, King of Prussia, PA 19406. This response should be clearly marked as a "Reply to a Notice of Violation and Order; IA-13-038."

All documents filed in NRC 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, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. 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 e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital 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 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 EIE, users will be required to install a web browser plug-in from the NRC 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 through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC 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 (ET) 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 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, any others who wish to participate in the proceeding (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 (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, 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, ATTN: 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, ATTN: 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 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 Joseph S. Shepherd 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) and (f).

If a hearing is requested by Joseph S. Shepherd 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 issued 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.

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

Dated at Rockville, Maryland, this 20 day of December 2013

For the Nuclear Regulatory Commission

/RA/

Roy P. Zimmerman, Director

Office of Enforcement