



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PA 19406-2713

September 15, 2014

Joseph S. Shepherd
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

IA-14-028

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Shepherd:

This letter refers to the safety inspection conducted on March 14, 2014, and continuing in-office through August 18, 2014, regarding your activities at the Pontifical Catholic University (Pontifical), Ponce, Puerto Rico. Your activities were conducted under Foss Therapy Services, Inc., (FTS), a California licensee, in NRC jurisdiction and were authorized under reciprocity by a general license granted by 10 CFR 150.20(a). The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you as President, FTS, by phone at the conclusion of the inspection on August 18, 2014. An inspection report documenting the results of the inspection will be issued to FTS in a separate correspondence.

During our onsite inspection on March 14, 2014, the inspector questioned whether you, acting as principal, FTS, notified Pontifical (your customer) that you had been issued NRC Orders IA-08-014 and IA-13-038, as required. You stated that you notified University staff via email on February 14, 2014, about proposed work activities at the Pontifical site. We reviewed that email and noted that it referred to "USNRC requirements and orders" without explicitly stating that you were issued NRC Order IA-08-014, dated September 8, 2008, and NRC Order IA-13-038, dated December 20, 2013, as required by NRC Order IA-13-038. Due to the lack of specific language in your February 14, 2014, email, we determined that you did not meet the requirements in NRC Order IA-13-038 for notification to the customer. Furthermore, after discussion with Pontifical staff, we found that the customer did not recognize that your email was intended to be a notification that you were issued Orders by the NRC.

Subsequent to the March 14, 2014, on-site inspection, you requested that the NRC review a draft notification email that you proposed to provide to your customers to satisfy the customer notification requirements in NRC Order IA-13-038. In response to that request, the NRC reviewed with you, verbatim, the requirements as written in NRC Order IA-13-038, but did not comment on the draft notification.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. Because the violation was identified by the NRC and is similar to the failure to provide notification to the customer as documented in the Notice of

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Violation (Notice) issued with the NRC Order IA-13-038 dated December 20, 2013, the current violation is cited in the enclosed Notice (Enclosure 1). The violation involved your failure to notify your customer, Pontifical Catholic University, in writing, that the NRC had issued Orders IA-08-014 and IA-13-038 to you. Although we had verified that you took corrective action to address the previous violation, the current violation is of concern because your actions were not effective in preventing recurrence and indicate a lack of attention to detail. Given that the current violation is similar to a previous violation, any additional violations could be an indication you cannot be relied upon to comply with NRC requirements and, therefore, will be considered for escalated enforcement action, including issuing you an Order prohibiting your involvement in all NRC licensed activities and/or a civil penalty.

You are required to respond to this letter within 30 days of the date of this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you must provide: (1) the reason for the violation; (2) the corrective steps that you have 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.

In addition, in your response you must provide an example of your proposed customer notification. This notification is required by NRC Order IA-13-038, which states, in part, that you must notify your customers in writing that you have been issued both NRC Order IA-08-014 and NRC Order IA-13-038, and to make the Orders available to your customers before beginning work. To meet the intent of this requirement, any written customer notification must state that you, Joseph S. Shepherd, have been issued NRC Order IA-08-014, and NRC Order IA-13-038, and that copies of the Orders are available to them. The Orders can be made available to customers by email.

The NRC would emphasize that, although we are requiring you to specifically address the customer-notification provision in NRC Order IA-13-038, all other currently applicable provisions in both NRC Order IA-13-038 and NRC Order IA-08-014 remain in effect.

If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC's review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with Section 2.390 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Unless you provide a sufficient basis to withdraw this violation within 30 days of the date of this letter, a copy of this letter and its enclosure, and your response, if it does not include a basis to withdraw the violation, with personal privacy information removed, will be made available to the Public within 45 days of this letter. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). This enforcement action will be added to the list of significant enforcement actions and posted on the NRC Web site.

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not

publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. 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>.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Please contact me at 610-337-5281 if you have any questions regarding this matter.

Sincerely,

/RA J. P. Dwyer for/

Daniel S. Collins, Acting Director
Division of Nuclear Materials Safety

Enclosure:

Notice of Violation

cc: State of California

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/RA J. P. Dwyer for/

Daniel S. Collins, Acting Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation
cc: State of California

Distribution: (Release after 45 Day Hold)

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OFFICE	FSME		OE	OGC	DNMS/RI
NAME	MBurgess		JWray	MClark NLO	DCollins/jpd f/
DATE	8/28/14		8/28/14	9/2/14	09/15/14

*See previous concurrence OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Joseph S. Shepherd
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

IA-14-028

During NRC inspections conducted on March 14 – August 18, 2014, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

NRC Order Conditioning Involvement in NRC-Licensed Activities, IA-13-038, dated December 20, 2013, requires, in part, that prior to conducting licensed activities in NRC jurisdiction, Mr. Joseph S. Shepherd shall notify each customer in writing that the NRC has issued the Order and Order IA-08-014, dated September 8, 2008, to him. The notifications shall be made for a period of three years from the date of the Order.

Contrary to the above, on March 14, 2014, Mr. Shepherd conducted licensed activities in NRC jurisdiction at Pontifical Catholic University located in Ponce, Puerto Rico, without notifying Pontifical Catholic University, the customer, that the NRC had issued Order IA-13-038 and Order IA-08-014 to him.

This is a Severity Level IV violation. (Enforcement Policy Section 6.9)

Pursuant to the provisions of 10 CFR 2.201, Joseph S. Shepherd is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 2100 Renaissance Blvd, Suite 100, King of Prussia, PA 19406, and marked "Open by Addressee Only," 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" and should include: (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. 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 this Notice, an order or a Demand for Information may be issued as to why other enforcement action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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 and in the NRC's Agencywide Document 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. 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 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. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. 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 15th day of September 2014