



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

March 2, 2016

EA-15-113

Bradley D. Bastow, D.O.  
c/o Mr. Philip Troy, Esq.  
217 Ash Court  
Wexford, PA 15090-7817

SUBJECT: NOTICE OF VIOLATION – BRADLEY D. BASTOW, D.O.  
NRC FOLLOW-UP INSPECTION REPORT NO. 03035710/2014001(DNMS),  
AND INVESTIGATION REPORT NO. 3-2014-016

Dear Dr. Bastow:

This letter is in reference to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on March 27, April 21, April 24, and May 5, 2014, with continued in-office review through June 20, 2014, at your facility in South Haven, Michigan. The purpose of the inspection was to review and verify activities were being performed in compliance with your NRC license and the Confirmatory Order issued to Bradley D. Bastow, D.O. on September 3, 2013. During the inspection, the inspector identified apparent violations of NRC requirements associated with failure to follow the Area Survey Procedures and Emergency Procedures. In addition, on May 20, 2015, the NRC Office of Investigations completed its investigation regarding whether a technologist at your facility deliberately provided incomplete and inaccurate information on a daily survey record. The results of the NRC inspection and investigation, the circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with Mr. Troy, your attorney, on December 15, 2015. Details pertaining to the inspection findings and the investigation can be found in NRC Inspection Report No. 03035710/2014001(DNMS), dated July 30, 2014, and NRC letter dated December 16, 2015. The Inspection Report and the letter can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Numbers ML14212A105 and ML15350A419, respectively. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the NRC letter dated December 16, 2015, we provided you with the opportunity to address the apparent violations identified in the report by: (1) responding to the apparent violations (characterized as open items in NRC Inspection Report No. 03035710/2014001(DNMS)); (2) requesting a Pre-decisional Enforcement Conference (PEC); (3) requesting Alternative Dispute Resolution (ADR); or (4) requesting termination of your NRC license.

In a letter received January 20, 2016, you provided a response to the apparent violations. In your response, you requested to terminate your NRC license number 21-32316-01. You stated that you had successfully completed activities associated with shutdown of your facility at 950 Blue Star Highway, Suite 1-2, South Haven, Michigan, including transferring radioactive material to an authorized user and performing close-out surveys of the facility. Upon NRC

staff's review of the information and additional documentation, NRC staff terminated your license on February 5, 2016.

Based on the information developed during the inspection and investigation, and information that you provided in your response received on January 20, 2016, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The first violation involved the deliberate failure by the technologist to maintain complete and accurate information as required by Title 10 of the *Code of Federal Regulations* (CFR) 30.9(a). Specifically, the technologist failed to annotate an elevated survey reading on a daily survey record following a spill on April 23, 2014, in accordance with the Area Survey Procedures and Condition 15.A of Amendment 02 to the NRC license number 21-32316-01. The root cause of the violation was the individual's decision not to follow the licensee's procedures. The violation is of concern to the NRC because of the potential risk of radiological contamination to employees and members of the public. Additionally, the deliberate failure to maintain complete and accurate information pertaining to radiological risk is of great regulatory concern because the NRC relies on the licensee's staff to be trustworthy and reliable in demonstrating the safe use of radioactive materials in the public domain. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

The second violation involved the failure to report the spill and to complete a Radioactive Spill Report and Radioactive Contamination Survey as required by the Emergency Procedures and Condition 15.A of Amendment 02 to NRC license number 21-32316-01. This violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level IV.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a Severity Level III violation.

Because your facility has been the subject of escalated enforcement action within the last two years<sup>1</sup>, the NRC considered whether, in this case, credit was warranted for *Identification* and *Corrective Action*, and whether discretion was warranted for the Severity Level III violation in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy.

The NRC determined that credit was not warranted for *Identification* because the violation was identified by an NRC inspector. However, the NRC determined that credit was warranted for *Corrective Action*. Based on the information gathered during the inspection, your immediate corrective actions included locking the treadmill room and posting signs on both doors indicating the presence of contamination. Your long-term corrective actions included decommissioning of the facility and requesting termination of NRC license number 21-32316-01. In accordance with

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<sup>1</sup> On November 6, 2014, the NRC issued a Notice of Violation and proposed imposition of a civil penalty to Bradley D. Bastow D.O. (ML14309A590) for noncompliance with conditions of a Confirmatory Order issued on September 3, 2013 (ML13241A320). On August 4, 2015, the NRC issued an Order imposing the civil penalty (ML15181A050).

Section 3.5 of the Enforcement Policy, "Violations Involving Special Circumstances," the NRC is exercising discretion to not propose a civil penalty because your NRC license has been terminated. However, should you request an NRC license in the future, any monetary civil penalty associated with this violation will be reinstated.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and in your letter received January 20, 2016. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in 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/>).

Sincerely,

***/RA Darrell Roberts Acting for/***

Cynthia D. Pederson  
Regional Administrator

Docket No. 030-35710  
License No. 21-32316-01

Enclosure:  
Notice of Violation

cc: State of Michigan  
Philip Troy, Esq.

## NOTICE OF VIOLATION

Bradley D. Bastow D.O  
South Haven, MI

Docket No. 030-35710  
License No. 21-32316-01  
EA-15-113

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on March 27, April 21, April 24, and May 5, 2014, with continued in-office review through June 20, 2014, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

Title 10 of the *Code of Federal Regulations* (CFR) 30.9(a) requires that information provided to the Commission by an applicant for a licensee or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

Condition 15.A of Amendment 02 to NRC License 21-32316-01 states that the licensee shall conduct its program in accordance with the application dated April 26, 2011. Furthermore, the condition states that the NRC's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

Item 10.12 of the application dated April 26, 2011, entitled Area Survey Procedures, states in part that a record shall be kept of all survey results.

Contrary to the above, on April 23, 2014, information required by Condition 15.A was not complete and accurate in all material respects. Specifically, the licensee's nuclear medicine technologist failed to document the presence of residual contamination in the licensee's facility on the licensee's daily survey record.

This is a Severity Level III violation (Section 6.3).

Condition 15.A of Amendment 02 to NRC License 21-32316-01 states that the licensee shall conduct its program in accordance with the application dated April 26, 2011. Furthermore, the condition states that the NRC's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

Item 10.5 of the application dated April 26, 2011, entitled Emergency Procedures, states in part that for minor spills the licensee will report the incident to the RSO who will supervise the cleanup of the spill and complete the Radioactive Spill Report and the Radioactive Spill Contamination Survey.

Contrary to the above, on April 23, 2014, the licensee failed to conduct its program in accordance with the procedures in its application dated April 26, 2011. Specifically, the licensee's nuclear medicine technologist failed to report a minor spill of Technetium-99m to the RSO or to complete a Radioactive Spill Report and Radioactive Contamination Survey.

This is a Severity Level IV violation (Section 6.3).

Enclosure

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. 03018085/2015001(DNMS) dated July 30, 2014 and NRC letter dated December 16, 2015. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-15-113," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to Cynthia D. Pederson, Regional Administrator, Region III, 2443 Warrenville Rd, Lisle, IL 60532-4352, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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. If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in 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>. Therefore, 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.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 2<sup>nd</sup> day of March, 2016.

Section 3.5 of the Enforcement Policy, "Violations Involving Special Circumstances," the NRC is exercising discretion to not propose a civil penalty because your NRC license has been terminated. However, should you request an NRC license in the future, any monetary civil penalty associated with this violation will be reinstated.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and in your letter received January 20, 2016. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in 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/>).

Sincerely,  
**/RA Darrell Roberts Acting for/**  
 Cynthia D. Pederson  
 Regional Administrator

Docket No. 030-35710  
 License No. 21-32316-01

Enclosure:  
 Notice of Violation

cc: State of Michigan  
 Philip Troy, Esq.

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<sup>1</sup>OGC "no legal objection" provided by e-mail from S. Lewman on February 24, 2016

<sup>2</sup>OE concurrence provided by e-mail from T. Marenchin on February 29, 2016

Letter to Bradley D. Bastow, D.O. from Ms. Cynthia D. Pederson dated March 2, 2016

SUBJECT: NOTICE OF VIOLATION – BRADLEY D. BASTOW, D.O.  
NRC FOLLOW-UP INSPECTION REPORT NO. 03035710/2014001(DNMS),  
AND INVESTIGATION REPORT NO. 3-2014-016

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