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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Thomas D. Murphy

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USNRC

LBP-98-16

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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In the Matter of

LOURDES T. BOSCHUK

(Order Prohibiting
Involvement in
NRC-Licensed Activities)

Docket No. IA 98-20

ASLBP No. 98-742-04-EA

August 5, 1998

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

In a joint motion filed July 31, 1998, petitioner Lourdes T. Boschuk and the NRC staff ask the Licensing Board to approve an attached settlement agreement and dismiss this proceeding. Finding their settlement accord is consistent with the public interest, we approve the agreement and terminate this case.

At issue in this proceeding is an April 10, 1998 staff enforcement order issued in connection with Ms. Boschuk's activities while acting as president and owner of J&L Testing Company (JLT).¹ JLT was the holder of an NRC

¹ Ms. Boschuk is the spouse of John Boschuk, Jr., who also was the subject of a staff enforcement order regarding his activities relating to JLT. See 63 Fed. Reg. 19,522 (1998). A Board issuance approving a settlement agreement

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byproduct materials license that authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources.² The staff order (1) precludes Ms. Boschuk for a period of five years from the date of the order from any involvement in NRC-licensed activities (including activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to 10 C.F.R. § 150.20); (2) requires that within the five-year period she must provide a copy of the order to any prospective employer or business partner who engages in NRC-licensed activities prior to accepting any employment or obtaining a partnership or ownership interest in such a licensed entity; and (3) mandates that following the five-year period she must notify the Regional Administrator of NRC Region I prior to the first time she engages in NRC-licensed activities or obtains an interest in an NRC-licensed entity. As the basis for its order, the staff relies on Ms. Boschuk's alleged (1) materially inaccurate statements to the NRC regarding use and storage of the Troxler gauges; and (2) improper destruction of records

¹(...continued)
and terminating an adjudicatory proceeding regarding that staff order also is being issued this date. See LBP-98-15, 48 NRC ____ (Aug. 5, 1998).

² Concurrently with the order directed to Ms. Boschuk, the staff issued an order revoking the JLT license. See 63 Fed. Reg. 19,529 (1998). In an submitted April 30, 1998, the licensee consented to revocation of the license.

relating to gauge use. See 63 Fed. Reg. 19,525, 19,525-26 (1998).

In an answer submitted April 30, 1998, Ms. Boschuk denied that she willfully violated NRC requirements relative to the staff's allegations and requested a hearing to contest the staff's April 1998 order. After being appointed to conduct this adjudicatory proceeding, see 63 id. 28,526 (1998), in a May 21, 1998 initial prehearing order this Board requested a joint report from Ms. Boschuk and the staff that, among other things, set forth the status of any settlement discussions between them. On June 15, 1998, and again on July 1, 1998, the participants provided joint reports that stated they were engaged in settlement negotiations and requested the proceeding be held in abeyance pending the outcome of those discussions. Thereafter, the participants filed the joint settlement motion now before us.

Under the terms of the July 30, 1998 settlement agreement, the staff agrees to modify the April 1998 enforcement order to reduce from five to two and one-half years (specifically, until September 27, 2000) (1) the term of the prohibition on Ms. Boschuk having any involvement in NRC-licensed activities; and (2) the period during which Ms. Boschuk is required to provide a copy of the agency's enforcement order to employers or business partners. The order's requirement for post-prohibition notification of the

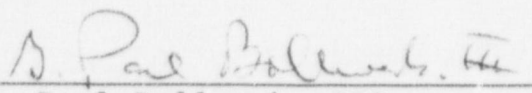
Regional Administrator is not retained under the settlement agreement. The staff also agrees not to take any further enforcement action against Ms. Boschuk based on the facts outlined in the April 1998 order. In turn, Ms. Boschuk agrees to withdraw her hearing request and waives any right to appeal or contest the settlement agreement once it is approved by this Board. Both participants agree there has not been any adjudication of wrongdoing by Ms. Boschuk and the settlement agreement is not to be construed as an admission of wrongdoing by Ms. Boschuk or a concession of no wrongdoing or lack of agency jurisdiction by the staff.


Pursuant to subsections (b) and (c) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(b), (c), and 10 C.F.R. § 2.203, we have reviewed the participants' joint settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. Based on that review, and according due weight to the position of the staff, we have concluded both actions are consonant with the public interest. We thus grant the participants' joint motion to approve the settlement agreement and dismiss this proceeding.

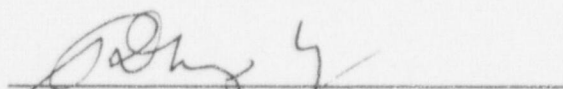
For the foregoing reasons, it is this fifth day of August 1998, ORDERED, that:

1. The July 31, 1998 joint motion of Lourdes T. Boschuk and the staff is granted and we approve their July 30, 1998 "Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.
2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD³


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE


Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 5, 1998

³ Copies of this memorandum and order were sent this date to counsel for petitioner Lourdes T. Boschuk by Internet e-mail transmission; and to counsel for the NRC staff by e-mail through the agency's wide area network system.

ATTACHMENT 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOURDES T. BOSCHUK)	Docket No. IA 98-20
)	
(Order Prohibiting Involvement in)	
NRC-Licensed Activities))	

SETTLEMENT AGREEMENT

On April 10, 1998, the Nuclear Regulatory Commission ("NRC") issued an "Order Prohibiting Involvement in NRC-Licensed Activities" ("Order") captioned "IA 98-20" to Lourdes T. Boschuk (hereafter "Mrs. Boschuk"). See 63 Fed. Reg. 19,525 (April 20, 1998). On April 30, 1998, Mrs. Boschuk answered the Order, denying that she engaged in a pattern and practice of willfully violating NRC requirements and requesting a hearing.

The parties to the above-captioned proceeding, the NRC staff ("Staff") and Mrs. Boschuk have engaged in negotiation and agree that it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the Order, subject to the approval of the Atomic Safety and Licensing Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Mrs. Boschuk agrees to withdraw her request for a hearing, dated April 30, 1998, and otherwise waive her right to a hearing in connection with this matter, and waive any right to contest or otherwise appeal this Settlement Agreement once approved by the Atomic Safety and Licensing Board. Such withdrawal and waiver will become effective only upon approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

2. Mrs. Boschuk agrees to refrain from engaging in NRC-licensed activities until September 27, 2000. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 C.F.R. § 150.20.

3. Mrs. Boschuk agrees, that until September 27, 2000, she will

a. immediately provide a copy of this Settlement Agreement to any employer or other person who directs or requests Mrs. Boschuk to perform duties involved in NRC-licensed activities as described in paragraph 2, above. The purpose of this

requirement is to ensure that the employer or business partner is aware of the prohibition on Mrs. Boschuk from engaging in NRC-licensed activities; and

- b. provide a copy of this Settlement Agreement to any NRC licensee prior to acquisition of an ownership or partnership interest in such licensee. The purpose of this requirement is to ensure that the NRC licensee is aware of the prohibition on Mrs. Boschuk from engaging in NRC-licensed activities. This requirement does not apply to the purchase of stock in a licensee whose shares are publicly traded.

4. In consideration of Mrs. Boschuk's agreement in paragraphs 1-3 of this Settlement Agreement and Mrs. Boschuk's statement in paragraph IV.1 of her April 30, 1998 answer (sworn to in an affidavit appended thereto) that she has complied with the September 27, 1995 Suspension Order, the Staff hereby modifies paragraphs III, IV.1, IV.2, and IV.3 of the Order consistent with paragraphs 2-3 above, however, all other provisions of the Order shall remain in effect. The Staff further agrees not to take any further enforcement action against Mrs. Boschuk based on the facts outlined in the Order. In the event that Mrs. Boschuk fails to comply with the conditions set forth in paragraphs 1-3 of this Settlement Agreement, the Staff expressly reserves the right to take whatever action necessary and appropriate to enforce the terms of this Settlement Agreement.

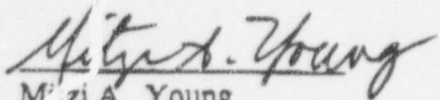
5. The Staff and Mrs. Boschuk understand and agree that this Settlement is limited to the issues in and the parties to the above-captioned proceeding.

6. Mrs. Boschuk and the Staff (hereafter collectively referred to as "the parties") agree to file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 C.F.R. § 2.203. If this Settlement Agreement is not approved or is changed in any substantive manner by the Board, this Settlement Agreement may be voided by any party by giving written notice to the parties and the Board. The parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

7. The Staff and Mrs. Boschuk agree and acknowledge that there has not been any adjudication of any wrongdoing by Mrs. Boschuk and that this Settlement Agreement is the result of a compromise and shall not for any purpose be construed: (a) as an admission by Mrs. Boschuk of any wrongdoing; or (b) as a concession by the NRC Staff that no violation or wrongdoing occurred or that the NRC lacks jurisdiction to issue orders to Mrs. Boschuk.

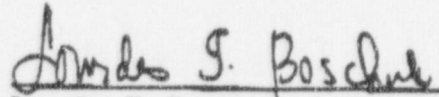
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IN WITNESS WHEREOF, Mrs. Boschuk and the Staff have caused this Settlement Agreement to be executed by the parties or their duly authorized representatives on this 30th day of July, 1998.

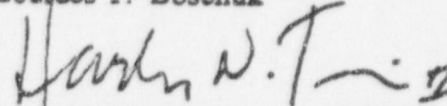


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Lourdes T. Boschuk



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOURDES T. BOSCHUK

(Order Prohibiting Involvement in
NRC-Licensed Activities)

Docket No.(s) IA 98-20

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-16) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board Panel
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Administrative Judge
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Washington, DC 20555

Harley N. Trice II, Esq.
Reed Smith Shaw & McClay LLP
435 Sixth Avenue
Pittsburgh, PA 15219

Dated at Rockville, Md. this
5 day of August 1998

Adria T. Byrdson
Office of the Secretary of the Commission