



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 2, 2022

IA-21-062

Joseph Berkich
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigations Report No. 1-2020-008)

Dear Mr. Berkich:

This letter refers to an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) between April 21, 2020, and March 1, 2021, to determine, in part, whether you, as owner of Steel City Gamma, LLC (SCG), engaged in deliberate misconduct that caused SCG to be in violation of NRC requirements. Based on the results of the OI investigation, the NRC determined that you deliberately conducted industrial radiography work, or instructed others to do so, at the Mid-Atlantic Fabrication (MAF) site in Pleasant Valley, West Virginia (WV), on December 18, 2019, and between January 1, 2020, and March 9, 2020, without first filing for reciprocity in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 150.20(b)(1). Further, between March 10 and April 9, 2020, after SCG's Commonwealth of Pennsylvania license had been modified to possession and storage, you deliberately performed industrial radiography at the MAF site, or instructed others to do so, without holding a specific or general NRC license authorizing such activities.

The NRC determined that your actions described above violated 10 CFR 30.10(a)(1), which states, in part, that any licensee or employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, to be in violation of any rule, regulation, order, or any term, condition, or limitation of any license issued by the Commission. Your deliberate actions caused SCG to be in violation of 10 CFR 150.20(b)(1) and 10 CFR 30.3(a). A copy of the enforcement action issued to SCG is included as Enclosure 2.

In a letter dated December 2, 2021, addressed to you as an individual, the NRC provided you with a factual summary of the NRC OI report and informed you that the NRC was considering escalated enforcement action against you for the apparent violations of 10 CFR 30.10(a)(1). In that letter, the NRC offered you the opportunity to discuss the apparent violations at a predecisional enforcement conference (PEC).

On February 3, 2022, the NRC held a PEC with you by telephone to discuss the apparent deliberate misconduct violations. During the conference, you did not dispute the violations, and you stated that after your license was modified to possession and storage only, you continued to conduct work for financial gain. You also acknowledged that your actions were contrary to the regulations.

Because of your deliberate actions, the NRC lacks the requisite reasonable assurance that you are willing to comply with NRC requirements. Consequently, the NRC is issuing an Order (Enclosure 1) prohibiting your involvement in NRC-licensed activities for a period of 5 years from the date of this Order. During the 5-year period, you will be prohibited from conducting, supervising, directing or otherwise engaging in any NRC-licensed activities as defined in Section IV of the Order. These activities include both activities conducted pursuant to a specific license issued by the NRC, as well as activities of Agreement State licensees conducted pursuant to the general license granted under 10 CFR 150.20. In addition, for a period of 1 year after the 5-year prohibition period expires, the Order requires you to provide to the NRC in writing the name, address, and telephone number of the first employer or other entity for whom you will be engaging in NRC-licensed activities.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.202, you are required to respond to the enclosed Order within 30 days of issuance and should follow the instructions specified in the enclosed Order when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Order. 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. 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/>.

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 Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

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 Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions concerning this matter, please contact Christopher Cahill at 610-337-5108 or Christopher.Cahill@nrc.gov.

Sincerely,

Mark D. Lombard, Director
Office of Enforcement

J. Berkich

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Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
2. Letter to Steel City Gamma

cc w/ enclosures: Commonwealth of Pennsylvania

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Office of Investigations Report No. 1-2020-008) Dated: 3/2/2022

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ENCLOSURE 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:)
Joseph Berkich) IA-21-062
)
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

At the time of the events discussed below, Joseph Berkich was the owner of Steel City Gamma, LLC (SCG), an industrial radiography company located in Pennsylvania. On May 14, 2019, SCG was issued Commonwealth of Pennsylvania radioactive materials license No. PA-1633, which authorized SCG to possess and utilize byproduct material in up to three (3) devices for the purposes of industrial radiography. During the relevant time periods discussed below, SCG did not possess a specific license issued by the Nuclear Regulatory Commission under 10 CFR Part 30, but as an Agreement State licensee, SCG could conduct radiography in NRC jurisdiction under the general NRC license granted pursuant to 10 CFR 150.20.

II

On April 2, 2020, the NRC was notified by the Pennsylvania Department of Environmental Protection (PA DEP) that SCG had been conducting licensed activities (industrial radiography) under the company name A&B Testing Services (ABT) for Mid-

Atlantic Fabrication (MAF) at MAF's facility in Pleasant Valley, West Virginia. PA DEP also informed the NRC that on March 10, 2020, PA DEP had issued Administrative Orders to SCG and to Mr. Berkich as an individual. The Administrative Order to SCG amended the company's PA license to authorize possession and storage only. On April 21, 2020, the U.S. Regulatory Commission (NRC), Office of Investigations (OI), Region I field office initiated an investigation to determine whether Steel City Gamma, LLC and/or A & B Testing Services, LLC (ABT) deliberately conducted unauthorized and/or unlicensed radiography activities within NRC jurisdiction.

Based on the evidence gathered during the investigation, the NRC concluded that two apparent violations of NRC requirements occurred. First, on December 18, 2019, and from approximately January 1, 2020, through March 9, 2020, SCG performed radiographic operations in NRC jurisdiction without first filing for reciprocity, in violation of 10 CFR 150.20(a)(1). Second, from March 10, 2020, until April 9, 2020, SCG performed radiographic operations in NRC jurisdiction without a valid NRC or agreement state license, in violation of 10 CFR 30.3(a). The NRC also concluded that Mr. Berkich's actions appeared to constitute deliberate misconduct in violation of 10 CFR 30.10(a)(1).

The OI investigation found that ABT is a PA business entity formed in early January 2020 by an associate of Mr. Berkich. During the time period in question, ABT was not licensed by PA DEP or the NRC to perform industrial radiography. Beginning on or about January 1, 2020, and continuing into April 2020, Mr. Berkich represented himself to MAF as an employee of ABT, conducted radiography and directed others to conduct radiography at the MAF site in West Virginia, and provided reports of those radiographic operations, using ABT's company name and information, to MAF. This radiography work was performed using SCG's equipment.

The investigation also revealed that SCG's work at the MAF site in West Virginia from January 2020 until March 10, 2020, using the company name ABT, was performed without first filing for reciprocity with the NRC or paying the appropriate fees. In addition, on December 18, 2019, SCG, using its own company name, performed radiography work for Porter Testing Services (PTS) at the MAF site in West Virginia without filing for reciprocity or paying the appropriate fees. Mr. Berkich was aware of the requirement to file for reciprocity when working in NRC jurisdiction based on his prior work experience with another company, during which he filed several reciprocity requests with the NRC for work in West Virginia.

Finally, the investigation found that SCG's work at the MAF site after March 10, 2020, was performed without SCG possessing a valid NRC or PA license authorizing SCG to conduct radiography. Mr. Berkich was aware of the requirements for licensing based on his work experience and prior interactions with PA DEP. Mr. Berkich was also aware of the terms of the PA DEP March 10, 2020 Administrative Order, which modified SCG's license to possession and storage only. After receiving the Administrative Order during an in-person meeting with PA DEP officials, Mr. Berkich went to the MAF site and conducted radiography later that day, and he continued to conduct radiography at the MAF site on numerous other occasions between March 10 and April 9, 2020.

In a letter dated December 2, 2021, the NRC informed Mr. Berkich that the NRC was considering escalated enforcement action against him for apparent violations of NRC's deliberate misconduct rule, 10 CFR 30.10(a)(1). Specifically, the NRC concluded that Mr. Berkich apparently engaged in deliberate misconduct that caused SCG to be in violation of 10 CFR 150.20(b)(1) when he engaged in, or directed others to engage in,

industrial radiography at the MAF facility in West Virginia without first filing for reciprocity. Additionally, the NRC concluded that Mr. Berkich apparently engaged in deliberate misconduct that caused SCG to be in violation of 10 CFR 30.3(a) when he engaged in, or directed others to engage in, industrial radiography at the MAF site in West Virginia knowing that SCG did not possess a specific or general NRC license authorizing such activities. In the letter, the NRC offered Mr. Berkich the opportunity to attend a Predecisional Enforcement Conference (PEC) to present his perspective on the apparent violations. A PEC was conducted on February 3, 2022.

During the PEC, Mr. Berkich stated that he did not dispute the violations. With regard to the work for PTS in December 2019, he stated that he filled out the reciprocity forms and provided them to the owner of PTS to provide dates and payment information. Mr. Berkich also stated that after receiving the Administrative Order from PA DEP he kept working to bring money in because the financial goal was more than the penalty, and he acknowledged knowing at the time that performing radiography under these conditions was not in accordance with the regulations.

Based on the results of the OI investigation, and information provided during the PEC, the NRC concluded that Mr. Berkich engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1).

III

Based on the above, the NRC has concluded that Mr. Joseph Berkich engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused Steel City Gamma to be in violation of 10 CFR 150.20(b)(1) and 10 CFR 30.3(a). The NRC must

be able to rely on companies working within NRC jurisdiction and their employees to comply with NRC requirements. Mr. Berkich's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected if Mr. Berkich were permitted at this time to be involved in NRC-licensed activities. Therefore, the public's health, safety, and interest require that Mr. Berkich be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Berkich is required to notify the NRC of his first involvement in NRC-licensed activities for a period of one year following the expiration of the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

1. Mr. Joseph Berkich is prohibited for five years from the date of this Order from conducting, supervising, directing, or in any other way engaging in NRC-licensed activities. 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 pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Joseph Berkich is currently involved in NRC-licensed activities, he must immediately cease those activities; inform the NRC of the name, address, and telephone number of the employer or other entity for whom he is conducting NRC-licensed activities; and provide a copy of this Order to the employer or other entity.

3. For a period of one year after the five-year prohibition on engaging in NRC-licensed activities has expired, Mr. Joseph Berkich shall, within 20 days of accepting his first employment offer involving NRC-licensed activities or otherwise first becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or other entity for whom he will be participating in or conducting the NRC-licensed activities. In the notification, Mr. Berkich shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

In accordance with 10 CFR 2.202, Mr. Berkich must submit a written answer to this Order under oath or affirmation within 30 days of its publication in the Federal Register. Mr. Berkich's failure to respond to this Order could result in additional

enforcement action in accordance with the Commission's Enforcement Policy. In addition, Mr. Berkich and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the Federal Register. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. 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, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC ([ADAMS Accession No. ML13031A056](#)) and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>.

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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (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 proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is 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 on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail confirming receipt of the document. The E-Filing system also distributes an e-mail that provides access to the document to the NRC's 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 document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site->

help/e-submittals.html, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have 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 stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal 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 should not include copyrighted materials in their submission.

If a person other than Mr. Berkich 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 Mr. Berkich 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 published in the Federal Register 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.

FOR THE NUCLEAR REGULATORY COMMISSION

Mark D. Lombard, Director
Office of Enforcement

Dated this 2nd day of March 2022.