



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

November 22, 2005

EA-05-123
EA-05-204

Mr. Clinton L. Lingren, President
Sabia, Inc.
7944 Convoy Court
San Diego, California 92111

**SUBJECT: CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE
IMMEDIATELY)**

Dear Mr. Lingren:

The enclosed Confirmatory Order is being issued to Sabia, Inc., as part of a settlement agreement between Sabia and the NRC concerning apparent violations identified in NRC Inspection Report 150-00004/05-002 (OI Investigation Reports 4-2004-016 AND 4-2004-019) dated July 14, 2005. That inspection report identified two apparent violations that were being considered for escalated enforcement. The first apparent violation involved Sabia's failure to comply with NRC's reciprocity requirements when it did not comply with all terms and conditions of its State of California byproduct material license while using licensed material in NRC jurisdiction. The second apparent violation occurred when Sabia effectively transferred licensed material to persons who were not authorized to receive such material under the terms of a specific or general license. Further, the NRC is concerned that willfulness is associated with the first apparent violation.

In response to the inspection report, Sabia requested use of the NRC's Alternative Dispute Resolution (ADR) process to resolve differences it had with the NRC concerning the inspection findings. An ADR mediation session was conducted between Sabia and the NRC in Arlington, Texas on August 31, 2005, at which time the settlement agreement was reached. The elements of the settlement agreement were documented in your letter dated August 31, 2005.

In summary, as part of the settlement agreement, Sabia acknowledges that there were violations, but did not agree that willfulness was involved. Sabia also agreed to provide its employees with additional training and to conduct additional audits. As part of the settlement agreement and in consideration of and exchange for Sabia's adequate implementation of the additional actions (training and audits), the NRC will not draw any conclusion on whether willfulness was involved and has agreed not to pursue any further enforcement actions related to these specific issues and violations identified in NRC's inspection report of July 14, 2005. Please note that nothing in the agreement prevents the NRC from taking enforcement actions for violations of this Confirmatory Order.

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. Violations of this Order may also be subject to civil monetary penalties.

Sabia, Inc.

2

Questions concerning this letter should be addressed to Ms. Sally L. Merchant, Office of Enforcement, who can be reached at 301-415-2747.

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 or from the NRC's document 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 www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Michael R. Johnson, Director
Office of Enforcement

Docket No. 030-35997
License No. 11-27727-01

Enclosure: As stated

cc (w/enclosure):
California Radiation Control Program Director
Idaho Radiation Control Program Director

Sabia, Inc.

3

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cc (w/enclosure):
California Radiation Control Program Director
Idaho Radiation Control Program Director

ADAMS ACCESSION NUMBER: ML053260091
ADAMS: U Yes ☐ No Initials: gmv
U Publicly Available (delay until Conf Order is issued)
☐ Non-Publicly Available ☐ Sensitive U Non-Sensitive

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*Previous concurrence on draft Confirmatory Order @ ML052130100

RIV:ES		C:NMLB		D:DNMS		RC		DRA			
MVasquez*		JWhitten*		L Wert*		K Fuller*		TPGwynn*			
/RA/		/RA/		M Shaffer for		/RA/		/RA/			
9/13/05		9/13/05		9/14/05		9/16/05		9/19/05			
RA		NMSS		OGC		OE : ES		OE : SC		D:OE	
BSMallett*		G Morell*		B Jones*		S. Merchant		C. Nolan		M Johnson	
/RA/		10/3/05		10/31/05		11/21/05		11/21/05		11/22/05	
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Sabia, Inc.
San Diego, California

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Docket No. 030-35997
License No. 11-27727-01
EA-05-123, 05-204

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

In calendar year 2004, Sabia, Inc., (Sabia or Licensee) had been the holder of a general license pursuant to 10 CFR 150.20, "Recognition of Agreement State Licenses" which allowed Sabia to conduct licensed activities in NRC's jurisdiction using its State of California license. Sabia is also the holder of NRC License No. 11-27727-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The NRC license authorizes Sabia to possess and use certain licensed material in fixed gauging devices that have been registered either with the NRC or with an Agreement State and have been distributed in accordance with an NRC or Agreement State specific license. The license was most recently amended on June 21, 2005, and is due to expire on June 30, 2012.

II

On March 16, 2005, the NRC concluded an investigation into Sabia's activities that were conducted over the period from January to July of 2004, at the Farmersburg Mine, Pimento Indiana; the R.A.G. Emerald Mine, Waynesburg, Pennsylvania; and the McElroy Mine, Moundsville, West Virginia. The investigation reviewed activities conducted under the provisions of a general license granted to Sabia pursuant to the provisions of 10 CFR 150.20 as they relate to radiation safety and compliance with the Commission's rules and regulations.

Based on the results of the investigation, two apparent violations were identified and have been considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violations considered for escalated enforcement action involved: (1) Sabia's failure to comply with 10 CFR 150.20 when it did not comply with all terms and conditions of its State of California byproduct material license while using licensed material in NRC jurisdiction, and (2) as a result, Sabia effectively transferred licensed material to persons who were not authorized to receive such material under the terms of a specific or general license. In addition, the NRC was concerned that willfulness, in the form of careless disregard, was associated with the first apparent violation. These findings were documented in NRC Inspection Report 150-00004/05-002 (OI Investigation Reports 4-2004-016 AND 4-2004-019) dated July 14, 2005.

In response to the July 14, 2005 inspection report, Sabia requested use of the NRC's Alternative Dispute Resolution (ADR) process to resolve differences it had with the NRC's inspection findings. The NRC uses ADR, a process in which a neutral mediator with no decision-making authority, assists the NRC and the party subject to enforcement action in reaching an agreement to resolve any differences regarding the enforcement action. In this case, an ADR session was conducted between the NRC and Sabia in RIV, Arlington, Texas on August 31, 2005. The ADR session was mediated by a professional mediator arranged through Cornell University's Institute of Conflict Resolution and a settlement agreement was reached.

III

The elements of the settlement agreement are documented in a letter from Mr. Clinton L. Lingren, President, Sabia to the NRC dated August 31, 2005, and consist of the following:

1. Sabia acknowledges that there were violations as described in NRC Inspection Report 150-00004/05-002. Specifically, there was a violation of 10 CFR 150.20 and 10 CFR 30.41(a) and (b)(5). Sabia does not agree that willfulness was involved. The NRC will not draw any conclusion on whether willfulness was involved with these violations.
2. In order to prevent recurrence of these types of violations, Sabia agrees to take the following actions described in Section IV.
3. Consistent with the NRC's ADR policies, Sabia agrees to the issuance of a Confirmatory Order confirming this agreement, and understands that the NRC will issue a press release along with the Confirmatory Order.
4. The NRC agrees not to pursue any further enforcement actions related to these specific issues and violations.

Nothing in this agreement prevents the NRC from taking enforcement actions for violations of this Confirmatory Order.

On November 15, 2005, Sabia consented to issuing this Confirmatory Order with the commitments as described in Section IV below. Sabia further agreed in its November 15, 2005, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing on this Confirmatory Order. The NRC has concluded that its concerns can be resolved through effective implementation of Sabia's commitments. Note that Items 1, 3, and 4, above are not included in Section IV below. This is because Item 1 reflects Sabia's

acknowledgment of the violations and NRC's decision not to draw a conclusion on willfulness.

Item 3 relates to agreement of the issuance of the Confirmatory Order and is not needed. And,

Item 4 relates to NRC's agreement not to take enforcement action on the apparent violations in exchange for effective implementation of Sabia's additional action.

I find that Sabia's commitments as set forth in Section IV are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Sabia's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

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 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 11-27727-01 IS MODIFIED AS FOLLOWS:

In order to prevent recurrence of the types of violations identified in NRC Inspection Report 150-00004/05-002, dated July 14, 2005, Sabia shall take the following actions:

1. Training

In addition to the current training program for all employees who work with nuclear sources (to include technicians, technician supervisors, and all radiation safety officer (RSO) staff,) SABIA will put in place training that outlines the responsibilities of the RSO and those who regularly provide checks and balances

to ensure that RSO duties are carried out in accordance with NRC requirements, by February 28, 2006. This training will outline policy for internal reviews of communications with regulatory agencies and verification that regulations and license conditions are properly followed. The company president will conduct that portion of the training that relates to policy and overall safety considerations. Specific training with regards to the requirements of 10 CFR 30.9 and potential enforcement actions that can occur will be included. Key principles of all this additional training will be incorporated into annual refresher training. A video record of the initial training will be kept available for review by the NRC.

2. Audits

After implementing efforts to respond to concerns expressed in the ADR meeting and before the end of 2006, SABIA will have a comprehensive audit of its radiation safety program performed by an outside auditor. Sabia will submit for NRC review a copy of the scope of the audit at least 30 days prior to its performance. Within a year after the conclusion of that audit, SABIA will perform an internal audit of that program including verification of actions performed in response to any external audit findings. SABIA will notify the NRC when those audits are complete and make the results available for NRC's review.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Sabia of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to 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, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and propose at least one admissible contention, addressing the criteria set forth in 10 CFR § 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to

be considered at such hearing shall be whether this Confirmatory 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 20 days from the date of this Confirmatory Order 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael R. Johnson, Director
Office of Enforcement

Dated this 22nd day of November 2005