

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030-35710; EA-14-116; NRC-2013-0208]

In the Matter of Bradley D. Bastow, D. O.

AGENCY: Nuclear Regulatory Commission.

ACTION: Imposition Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Imposition Order to Bradley D. Bastow, D. O. imposing a civil penalty of \$7,000. On November 6, 2014, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty – \$7,000 to Bradley D. Bastow, D. O. for failing to comply with a Confirmatory Order issued on September 3, 2013.

DATES: *Effective Date:* August 4, 2015.

ADDRESSES: Please refer to Docket ID **NRC-2013-0208** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0208**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For questions about this Order, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Marenchin, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2979, e-mail: Thomas.Marenchin@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 5th day of August 2015.

For the Nuclear Regulatory Commission.

David L. Solorio, Acting Director,
Office of Enforcement.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Bradley D. Bastow, D. O.
South Haven, Michigan

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Docket No. 030-35710
License No. 21-32316-01
EA-14-116

ORDER IMPOSING CIVIL MONETARY PENALTY

I.

Bradley D. Bastow, D. O., (Bastow or the Licensee) is the holder of Materials License No. 21-32316-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30. The license was initially issued on April 20, 2001; was last amended on October 7, 2014; and is due to expire on October 31, 2016. The license discusses the operation of Bradley D. Bastow, D. O., at his place of business (Cardiology II, P.C.), in accordance with conditions specified therein. The facility is located on the licensee's site in South Haven, Michigan. The license currently reflects a standby status such that no radioactive material in 10 CFR 35.100 or 35.200 may be used under the license without an amendment. It permits use of materials specified in 10 CFR 35.65 for calibration and maintenance of equipment.

II.

An inspection of the Licensee's activities was conducted between March 27 and May 5, 2014, with continued in-office inspection through June 20, 2014. These inspections revealed that the licensee was not complying with the terms of a Confirmatory Order signed on September 13, 2013, to rectify previous willful violations. A written Notice of Violation and

Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 6, 2014. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated December 6, 2014. In response, the Licensee acknowledged the basic facts in the Notice, although the Licensee characterized them as being "administrative deficiencies."

As part of its answer to the Notice, the Licensee requested mitigation of the civil penalty by awarding *Corrective Action* credit, based on the Licensee's overarching action to shut down licensed activities. The Licensee acknowledged that: (1) not all the underlying issues had been corrected and (2) committed to complete them prior to restart of licensed activities. However, the Licensee stated that the shutdown eliminated any safety significance of the issues and provided a "clear demonstration" of its commitment to correct deficiencies before continuing to operate the facility.

The Licensee then requested complete mitigation of the civil penalty due to financial hardship. The Licensee indicated that it had experienced an overall loss of revenue, due to the facility being shut down, and was carrying tremendous debt. It further indicated that financial solvency was questionable.

III.

The NRC has reviewed the Licensee response and concluded that Corrective Action credit remained inappropriate. As stated in the NRC Enforcement Policy, Corrective Action credit is designed to encourage licensees to: (1) take the immediate actions necessary upon discovery of a violation that will restore safety, security, and compliance with the license, regulations, or other requirements; and (2) develop and implement (in a timely manner) the

lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes. While the Licensee eventually took an action to restore safety by placing its NRC license in standby, it has yet to restore compliance with its license and NRC regulations, nor has it addressed lasting actions to prevent recurrence. Furthermore, the NRC concluded that there was insufficient evidence to show that the Licensee recognized the significance of behavior, the need to correct past problems, and the importance of complying with NRC requirements in the future.

The NRC considered the Licensee's request for consideration of financial hardship. The NRC requested information that provided the basis for the financial hardship claim. However, the Licensee stated that it was unable to provide such information. Lacking any evidence supporting the financial hardship claim, the NRC concluded that there was insufficient basis to mitigate the civil penalty.

Therefore, after full consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

- A. The Licensee pays a civil penalty in the amount of \$7,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. Alternatively, this payment may be made in installments of \$300, plus interest, per month until the debt is paid. To request

installment payments, the Licensee shall contact the Accounts Receivable Team, Division of Financial Management in the Office of the Chief Financial Officer at 301-415-7347, within 30 days of the date of this Order to arrange for the terms of the promissory note for the penalty and shall make the first payment within 45 days of the date of the Order.

- B. At the time payment, or the first installment, is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 with a copy to the Region III Regional Administrator, 2443 Warrenville Road, Suite 210, Lisle, IL 60532.

The Director, Office of Enforcement, may provide relaxation or rescission of the above payment upon demonstration by Bradley D. Bastow, D. O., of good cause. To show good cause the Licensee must, at a minimum, provide:

- A. Evidence of the Licensee's debt load, including bank statements, credit card statements, and tax assessments.
- B. Evidence of the Licensee's income either in the form of tax returns, bank statements, or a certified statement from the licensee's accountant. If it is necessary to provide insurance or Medicaid income information, these documents must be redacted to eliminate any patient information.
- C. A statement as to why the NRC should have confidence in the Licensee's ability to pay its debts, including those to the NRC.

V.

In accordance with 10 CFR 2.202, Bradley D. Bastow, D. O., must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its publication in the Federal Register. In addition, Bradley D. Bastow, D. O., 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 such an 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 a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). 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. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (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 request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (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 hearing in this 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 <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are 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 notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://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 Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a 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 requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding

officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. 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 are requested not to include copyrighted materials in their submission.

If a person other than Bradley D. Bastow, D. O., 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 a licensee 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.

This Order shall be effective as of the date of signing by the Director, Office of Enforcement. If payment has not been made by the time specified above, the matter may be referred to the Attorney General for collection.

Dated at Rockville, Maryland, this 4th day of August 2015.

For the Nuclear Regulatory Commission.

/RA/

Patricia K. Holahan, Director
Office of Enforcement.