

NUREG-0940
Vol. 14, Nos. 3 & 4, Part 1
Individual Actions

Enforcement Actions: Significant Actions Resolved Individual Actions

Semiannual Progress Report
July – December 1995

Manuscript Completed: February 1996
Date Published: February 1996

**Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001**



DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED *DLC*

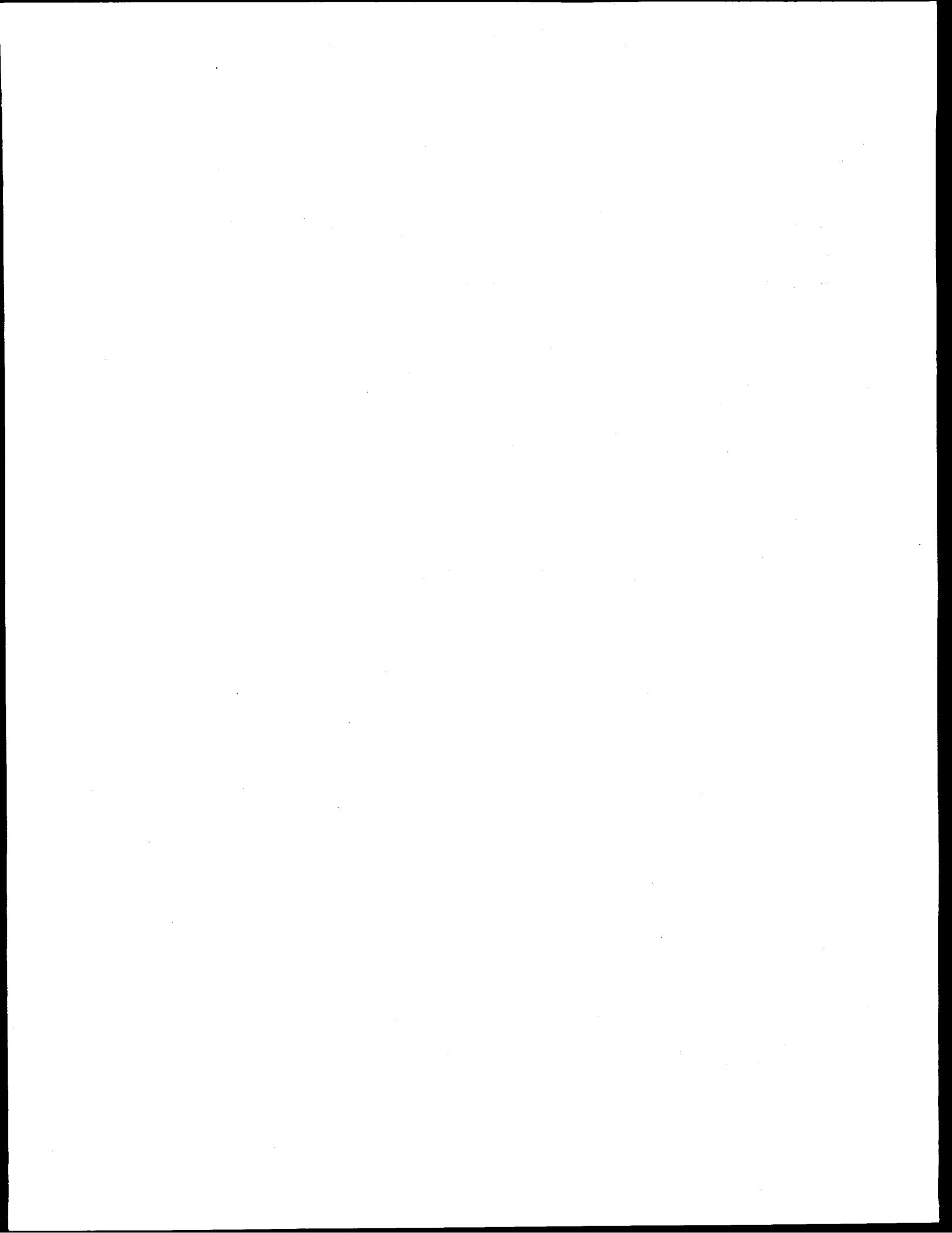
MASTER

DISCLAIMER

**Portions of this document may be illegible
in electronic image products. Images are
produced from the best available original
document.**

ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1995) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.



CONTENTS

	<u>Page</u>
ABSTRACT.....	iii
INTRODUCTION.....	1
SUMMARIES.....	3

ORDERS (* cases printed in previous volumes)

James Bauer IA 94-011.....	A-1
* Paul A. Bauman IA 94-020.....	A-22
* Michael J. Berna IA 94-032.....	A-34
* Jerome E. Bodian, M.D. IA 94-023.....	A-42
* John W. Boomer IA 94-015.....	A-52
Steven Cody IA 95-029.....	A-61
* Robert C. Dailey IA 94-003.....	A-71
* Richard J. Gardecki IA 93-001.....	A-86
* William K. Headley IA 94-002.....	A-96
Maria Hollingsworth IA 95-028.....	A-105
* William Kimbley, Joan Kimbley IAs 95-015 and 95-016.....	A-113
* Larry S. Ladner IA 94-019.....	A-121
Daniel J. McCool IA 94-017.....	A-131
* Stephen Mignotte IA 94-014.....	A-141

CONTENTS (Continued)

* Sean G. Miller IA 94-008.....	A-155
* Richard E. Odegard IA 94-018.....	A-167
Hartsell S. Phillips IA 94-001.....	A-177
* Douglas D. Preston IA 94-004.....	A-196
* Forrest L. Roudebush IA 95-03.....	A-205
* Guillermo Velasquez, M.D. IA 94-013.....	A-216
* David Tang Wee IA 94-006.....	A-225
* Rex Allen Werts IA 94-035.....	A-238
Larry D. Wicks IA 94-024.....	A-247
Hung Yu IA 95-037.....	A-283
Marc W. Zuverink IA 95-022.....	A-292

NOTICE OF VIOLATIONS

Jose Barba, M.D. IA 95-038.....	B-1
Russell Hamilton IA 95-030.....	B-6
Roy G. Newholm IA 95-041.....	B-10
John E. Rice IA 95-044.....	B-15
Roland Sawyer IA 95-047.....	B-19

Rickey O. Spell
IA 95-033.....B-24

Lawrence M. Wagner
IA 95-036.....B-26

Kenneth Zahrt
IA 95-046.....B-31

ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED
INDIVIDUAL ACTIONS

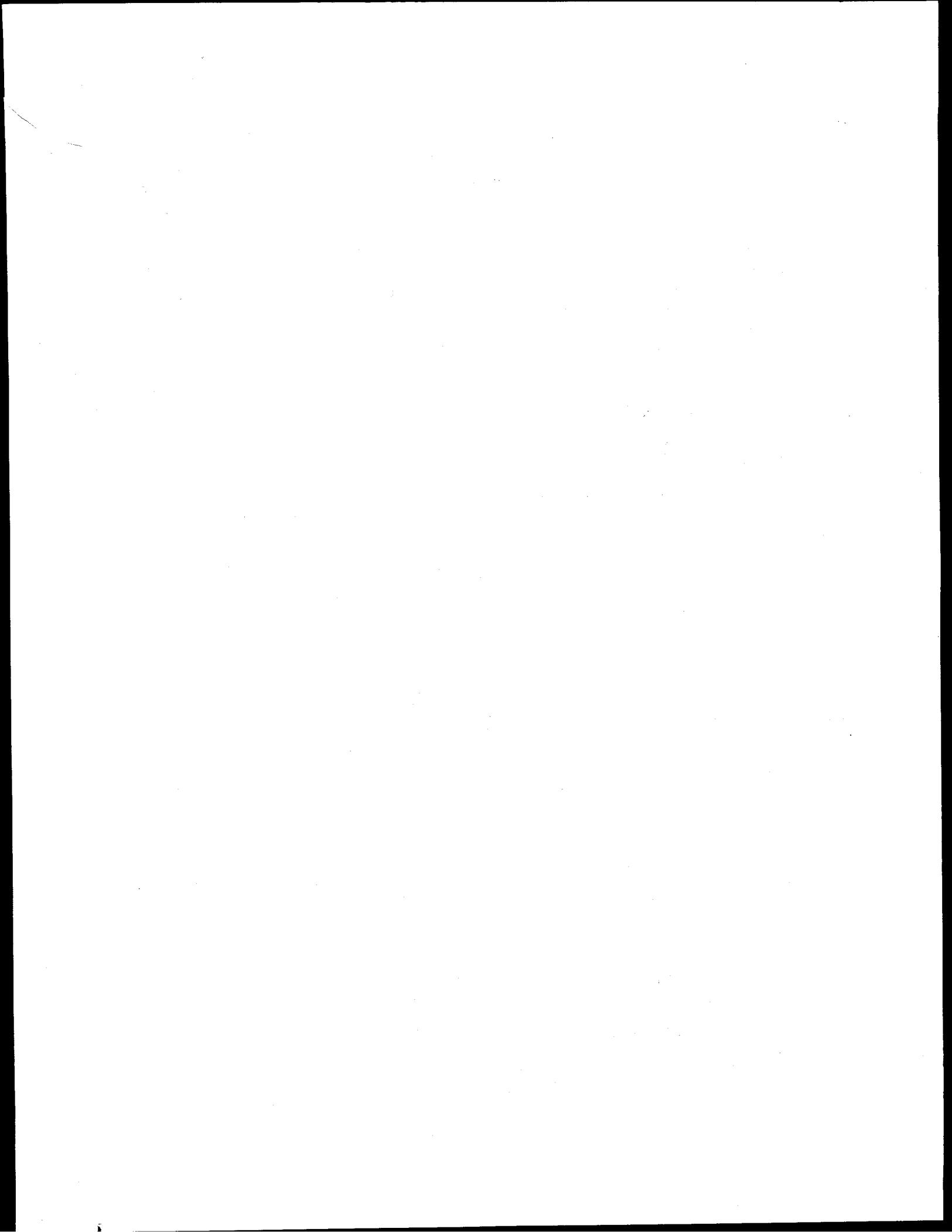
July - December 1995

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform all Nuclear Regulatory Commission (NRC) licensees about significant enforcement actions taken against individuals for the second half of 1995. Enforcement actions are issued in accordance with the NRC's Enforcement Policy, published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

In promulgating the regulations concerning deliberate misconduct by unlicensed persons (55 FR 40664, August 15, 1991), the Commission directed that a list of all persons who are currently the subject of an order restricting their employment in licensed activities be made available with copies of the Orders. These enforcement actions will be included for each person as long as the actions remain effective. The Commission believes this information may be useful to licensees in making employment decisions.

The NRC publishes significant enforcement actions involving reactor and materials licensees as Parts II and III of NUREG-0940, respectively.



SUMMARIES

INDIVIDUAL ORDERS

James Bauer, M.D.

IA 94-011

An Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) was issued May 10, 1994. The Order prohibited the above individual from being involved in NRC-licensed activities for a period of five years and required him to notify the NRC of any involvement for a period of two years thereafter. The Order was based on (1) the individual's performance of activities with a strontium-90 source that were not authorized by the license, (2) failure to provide complete and accurate information to NRC inspectors, and (3) failure to cause a radiation survey to be performed as required by 10 CFR 20.201, which led to a significant misadministration to a patient, as well as unnecessary radiation exposure to numerous members of the general public. The individual requested a hearing on May 26, 1994, and a settlement agreement was signed November 13, 1995. The settlement reduces to three years the prohibition on the individual's involvement in NRC-licensed activities.

Paul A. Bauman

IA 94-020

An Order Requiring Notification to NRC Prior to Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on the failure to train and certify personnel, creation of false records, and providing false information to the NRC. The Order requires for a period of three years that the individual provide notice to the NRC of his acceptance of each employment offer in NRC-licensed activities.

Michael J. Berna

IA 94-032

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued November 15, 1994 to the above individual. The Order was based on inspection and investigation findings which concluded that the individual deliberately violated 10 CFR 30.10 by failing to perform field audits of radiographers, created false audit records, and requested others to create false records. The Order removes the individual from NRC-licensed activities for a period of three years. In addition, the individual is to notify the NRC the first time that he engages in licensed activities following the prohibition period.

Jerome E. Bodian, M.D.

IA 94-023

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued September 8, 1994 to the above individual. The action was based on an inspection and investigation which concluded that the individual deliberately violated 10 CFR 35.53 by failing to measure the activity of radiopharmaceuticals prior to medical use and 10 CFR 30.10 by deliberately providing inaccurate information to the NRC. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years. In

addition, the individual shall provide notice to NRC the first time following the prohibition that he engages in NRC-licensed activities.

John W. Boomer

IA 94-015

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued July 14, 1994 to the above individual. The Order was based on investigation findings which concluded that the individual deliberately violated 10 CFR 35.70(e) and 10 CFR 30.10 while he was President of Chesapeake Imaging Center, Chesapeake, West Virginia, by failing to conduct weekly surveys for removable contamination. The Order prohibits the individual from engaging in NRC-licensed activities for a period of three years. In addition, for that same period he shall provide a copy of the Order to any prospective employer engaged in NRC-licensed activities, provide notice to NRC the first time following the prohibition that he engages in NRC-licensed activities, and cease activities if he is currently involved in NRC-licensed activities.

Steven Cody

IA 95-029

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC (Effective Immediately) was issued August 7, 1995 to the above individual. The Order was based on an inspection and an investigation which concluded that the individual had deliberately violated 10 CFR 34.44 by failing to supervise radiographer's assistants on multiple occasions between October 1992 and April 1993. The Order removed the individual from engaging in NRC-licensed activities for a period of one year. In addition, the Order requires the individual to notify, for a period of three years after the one-year prohibition, the NRC within 20 days of becoming involved in NRC-licensed activities.

Robert C. Dailey

IA 94-003

An Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately) was issued March 22, 1994 to the above individual who was employed by NSSI. The Order would have prohibited the individual from participating in NRC-Licensed or regulated activities for a period of five years. The individual asked for a hearing and a settlement agreement was entered into on August 10, 1994 between NSSI, Mr. Dailey, and the NRC. According to the agreement, Mr. Dailey is prohibited from conducting security screening or fitness for duty activities until March 22, 1996. NSSI agrees that, if contacted by another person or company considering employing the individual, it will advise that person or company of the existence of the agreement and will provide them a copy of the Settlement Agreement.

Richard J. Gardecki

IA 93-001

An Order Prohibiting Involvement in Certain NRC-Licensed Activities was issued May 4, 1993 to the above individual. The Order was based on the deliberate submittal of false information to former employers to obtain employment in licensed activities and to NRC investigators. The Order prohibits the individual, for a period of five years, from being named

on an NRC license as a Radiation Safety Officer or supervising licensed activities for an NRC licensee or an Agreement State licensee while conducting activities within NRC jurisdiction. It also requires for the same period notice by copy of the Order to prospective employers engaged in licensed activities and notice to the NRC on acceptance of employment in licensed activities.

William K. Headley

IA 94-002

An Order Requiring Notice to Certain Employers and Prospective Employers and Notification to NRC of Certain Employment in NRC-Licensed Activities was issued March 14, 1994 to the above individual. The Order was based on the individual's deliberate actions in failing to make daily and weekly radiation surveys in the nuclear medicine department where he is employed and falsifying NRC-required records to make it appear that the surveys had, in fact, been performed. The violations continued over a period of approximately two and a half years. The Order requires that the individual notify the NRC, for a period of two years, if he is currently employed or accepts employment involving NRC-licensed activities with any employer other than the licensee where the violations occurred and that he provide a copy of the Order to such employers and prospective employers.

Maria Hollingsworth

IA 95-028

An Order Prohibiting Involvement in NRC-Licensed Activities was issued August 3, 1995 to the above individual. The Order prohibits the individual from becoming involved in NRC-licensed activities for a period of one year. The order was issued because: (1) the individual knew she should no longer use gauges containing NRC-licensed material because the company's NRC license had expired, but she did so anyway; and (2) the individual also made a false statement to an NRC inspector by indicating that she had not used the gauges. The order also requires, for a period of one year after the one year prohibition, that the individual notify the NRC within 20 days of becoming involved in NRC-licensed activities.

William Kimbley
Ms. Joan Kimbley

IA 95-016
IA 95-015

A Confirmatory Order was issued June 12, 1995 based on an investigation which concluded that Midwest Testing, Inc., through its president, deliberately violated NRC requirements by: (1) allowing operators to use moisture density gauges without personnel monitoring devices, (2) not performing leak tests of two moisture density gauges, (3) not requesting a license amendment to name a new Radiation Protection Officer, (4) storing licensed material at an unauthorized location, and (5) allowing moisture density gauges to be used with an expired license. The investigation also concluded that the licensee's General Manager/Treasurer (the wife of the licensee's president) was involved in the deliberate violations noted in items (1), (2), and (5) above. The Order prohibits both the president and the General Manager/Treasurer, as well as Midwest Testing, Inc. and any successor entity, from applying to the NRC for a license and from engaging in, or controlling, any NRC-licensed activity for a period of five years.

Larry S. Ladner IA 94-019

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on the individual's failure to supervise radiographer's assistants performing licensed activities, falsifying a large number of quarterly personnel audits and providing false information to NRC officials. The Order prohibits the individual from engaging in NRC-licensed activities for a period of three years and for a two year period after the prohibition has expired, requires him to provide notice to the NRC when he will be involved in NRC-licensed activities.

Daniel J. McCool IA 94-017

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on an investigation which determined that the above individual deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition the individual failed to train and certify employees in radiation safety as required by the AMSPEC license. The Order prohibits the individual from engaging in NRC licensed activities for a period of five years, and for a period of five years after the prohibition to notify the NRC when he will be involved in NRC-licensed activities.

Stephen Mignotte IA 94-014

A Notice of Violation and Order Prohibiting Involvement in 10 CFR Part 55 Licensed Activities (Effective Immediately) was issued June 28, 1994 to the above individual. The actions are based on the individual performing licensed duties while under the influence of illegal drugs and submitting a false urine sample under the reactor licensee's fitness-for-duty program. The Order prohibits the individual from serving as licensed reactor operator for a period of three years from the date of the Order, and for the same period of time, requires that he notify prospective employers involved in NRC-licensed activities of the existence of the Order.

Sean G. Miller IA 94-008

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued April 21, 1994 to the above individual. The Order was based on an action taken by the individual during and following a rod mispositioning event at Dresden on September 18, 1992, while he was employed as the Qualified Nuclear Engineer at the Dresden Nuclear Station. The individual's actions included an attempt to conceal the occurrence of the event. The Order prohibits the individual for three years from the date of the Order from engaging in activities licensed by the NRC. After the three year prohibition the individual shall provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional two year period.

Richard E. Odegard

IA 94-018

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on the individual providing false testimony to the NRC, and deliberately failing to train and certify employees in radiation safety as required by the license conditions. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years and after the prohibition has expired requires him to provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional five year period.

Hartsell S. Phillips

IA 94-001

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued March 10, 1994 to the above individual. The action was based on the individual's deliberate false statements to NRC officials and deliberate violations involving: (1) administration of excessive radiopharmaceutical dosages, (2) failure to provide training to nuclear medicine technologists, (3) failure to perform daily constancy checks of the licensee's dose calibrator, (4) failure to perform the required daily and weekly contamination radiation surveys, and (5) failure to maintain accurate and complete records required by NRC. The Order prohibits the individual from engaging in NRC-licensed activities for an NRC licensee or an Agreement State that is subject to NRC jurisdiction. The individual requested a Hearing on March 30, 1994. A settlement was signed September 19, 1995 with the agreement that the individual would refrain from involvement in NRC-licensed activities for a period of five years from the date of the Order and, for a period of five years after the prohibition, will notify NRC of becoming involved in NRC-licensed activities.

Douglas D. Preston

IA 94-004

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued April 5, 1994 to the above individual. The action was based on the individual's falsification of information on his application for unescorted access to the licensee's Duane Arnold Energy Center. When interviewed by the investigators, the individual admitted that he had falsified his criminal history and indicated he would do so again. The Order prohibits the individual from involvement in licensed activities for a period of five years.

Forrest L. Roudebush

IA 95-013

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC was issued March 3, 1995 to the above individual. The action was based on investigations that found that the individual was responsible for deliberate violations of NRC requirements, including providing inaccurate information to NRC inspectors and investigators, and that he was untruthful in his testimony before the Atomic Safety and Licensing Board. The Order prohibits the individual from becoming involved in licensed activities for a period of five years from the date that the NRC staff issued an immediately effective Order suspending the license of the company.

(October 17, 1991). After the five year prohibition the individual shall provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional five year period.

Guillermo Velasquez, M.D. IA 94-013

A Confirmatory Order was issued June 3, 1994 to the above individual. The action was based on the individual's deliberate use of a Sr-90 eye applicator after his license had expired and providing false information to the NRC. The Order prohibits the individual's participation in licensed activities for a period of three years and requires the individual to notify the NRC the first time he engages in licensed activities after the prohibition period has ended.

David Tang Wee

IA 94-006

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued April 21, 1994 to the above individual. The Order was based on an action taken by the individual during and following a rod mispositioning event at Dresden on September 18, 1992, while he was employed as the Station Control Room Engineer at the Dresden Nuclear Station. The individual's actions included an attempt to conceal the occurrence of the event. The Order prohibits the individual for three years from the date of the Order from engaging in activities licensed by the NRC. After the three year prohibition the individual shall provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional two year period.

Rex Allen Werts

IA 94-035

An Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately) was issued December 12, 1994 to the above individual. The action was based on an investigation that concluded that the above individual had deliberately falsified his identity to gain employment and unescorted access to the Brunswick facility. The Order prohibits the individual from engaging in NRC-licensed activities and from gaining unescorted access to protected and vital areas of NRC-licensed facilities for a period of three years. After the three year prohibition the individual shall provide notice to the NRC of any employment in NRC-licensed activity for an additional five year period.

Larry D. Wicks

IA 94-024

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued September 27, 1994 to the above individual. The action was based on inspections and investigations which concluded that the individual deliberately violated NRC requirements as to submitting a dosimeter for evaluation, evaluating an employee's radiation exposure, providing calibrated ratemeters, and by providing false information to the NRC. The Order removed the individual from NRC-licensed activities for a period of five years. In addition, the Order requires the individual to provide notice to the NRC the first time following the prohibition that the individual engages in NRC-licensed activities. The

individual requested a hearing on October 14, 1994. In a settlement approved on November 16, 1995, the individual agreed to withdraw from the hearing proceeding.

Dr. Hung Yu

IA 95-037

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) pending further order was issued September 18, 1995 to the above individual. The action was based on an ongoing inspection and investigation which concluded that the above individual had engaged in deliberate misconduct by knowingly providing to the Licensee inaccurate information relating to the cause of an error that resulted in a misadministration. In addition, the individual engaged in deliberate misconduct which caused the Licensee to be in violation of NRC requirements including: (1) failure to perform contamination surveys upon receipt of labelled packages containing brachytherapy sources, and (2) failure to maintain complete and accurate records involving contamination surveys for incoming packages containing brachytherapy sources.

Marc W. Zuverink

IA 95-022

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC was issued June 27, 1995 to the above individual. The action was based on an investigation which determined that the individual stole tritium from the licensee's facility and transferred it to members of the public. The Order prohibits the individual from engaging in NRC-licensed activities for a period of ten years and requires that he provide notice to NRC for an additional five year period if he becomes involved in NRC-licensed activities.

Notice of Violations

Jose Barba

IA 95-038

A Notice of Violation was issued September 28, 1995. The action was based on an NRC investigation which concluded that the individual engaged in deliberate misconduct by discriminating against a technician for engaging in protected activity. Specifically, the individual presented the technician a letter which he had signed criticizing the technician for having discredited him and the department by providing information regarding an earlier violation to an NRC inspector.

Russell Hamilton

IA 95-030

A Notice of Violation was issued August 7, 1995. The action was based on an investigation which found that from October 1992 to April 1993, at a gas line project the individual deliberately conducted radiographic operations without wearing proper dosimetry.

Roy G. Newholm

IA 95-041

A Notice of Violation was issued October 10, 1995. The action was based on a violation involving record falsification. Specifically, some

screening certification letters were issued to licensees attesting to the acceptability of individuals for unescorted access before all actions associated with the required screening were completed. Also in some cases documents were deliberately backdated to create the appearance of properly performed screening.

John R. Rice IA 95-044

A Notice of Violation was issued October 18, 1995. The action was based on falsification of employment history information at a contractor employed by Palo Verde Nuclear Generating Plant. The individual failed to provide information of a previous employment which included termination for cause.

Roland Sawyer IA 95-047

A Notice of Violation was issued October 30, 1995. The action was based on the falsification of records of radiation surveys at Fort St. Vrain. The investigation found that several supervisors and technicians had participated in falsely documenting two categories of radiation survey records associated with the decommissioning project.

Rickey O. Spell IA 95-033

A Notice of Violation was issued August 11, 1995. The action was based on the illegal use of marijuana as evidenced by three positive drug screens for marijuana at the Edwin I. Hatch Nuclear Plant.

Lawrence M. Wagner IA 95-036

A Notice of Violation was issued September 19, 1995. The action was based on an event that occurred when the individual was the senior nuclear shift supervisor and he failed to ensure that a senior reactor operator was present in the control room while the reactor was in operational condition 1. The condition existed for approximately three minutes. Although the individual was notified of the event shortly after it occurred, the individual did not prepare an incident report and management was not apprised of the event until much later.

Kenneth Zahrt IA 95-046

A Notice of Violation was issued October 30, 1995. The action was based on the falsification of records of radiation surveys at Fort St. Vrain. The investigation found that several supervisors and technicians had participated in falsely documenting two categories of radiation survey records associated with the decommissioning project.

A- ORDERS



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

MAY 10 1994

IA 94-011

Dr. James Bauer, Medical Director
Indiana Regional Cancer Center
877 Hospital Road
Indiana, Pennsylvania 15701

Dear Dr. Bauer:

Subject: Order Prohibiting Involvement in NRC Licensed Activities
(Effective Immediately)

The enclosed Order is being issued to you based on the findings of an NRC inspection conducted on November 11, 1993, at the Indiana Regional Cancer Center (IRCC) facility in Indiana, Pennsylvania, and specifically: (1) your performance, as the Radiation Safety Officer and only authorized user, of activities with a strontium-90 source that were not authorized by NRC License No. 37-28179-01, (2) your deliberate failure to provide complete and accurate information to NRC inspectors on November 11, 1993, and (3) your failure to cause a survey to be performed as required by 10 CFR 20.201 at the Indiana Regional Cancer Center in a November 16, 1992, event which resulted in a significant radiation exposure to a patient and unnecessary radiation exposure to numerous members of the public.

Should you have any questions on this matter, please contact Ms. Patricia Santiago at (301) 504-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

Hugh L. Thompson, Jr.
Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations Support

Enclosure:
As Stated

cc w/encl:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania
Indiana Hospital
Miners Hospital

Douglas R. Colkitt, M.D.
President, Oncology Services Corporation
2171 Sandy Drive
State College, Pennsylvania 16801

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

James Bauer, M.D.

)

IA 94-011

)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

(EFFECTIVE IMMEDIATELY)

I

Dr. James Bauer, M.D. (Dr. Bauer) is listed as the Radiation Safety Officer (RSO) and sole authorized user on NRC License No. 37-28179-01 (license) issued to the Indiana Regional Cancer Center (Licensee) located in Indiana, Pennsylvania. Byproduct License No. 37-28179-01 was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35, and authorizes the Licensee to use a strontium-90 source for the treatment of superficial eye conditions in accordance with the conditions specified therein. The license, originally issued on April 25, 1988, was due to expire on April 30, 1993, but remained in effect, pursuant to 10 CFR 30.37(b), based on a timely request for renewal that was received by the NRC on April 5, 1993. By an Order Modifying and Suspending License (Effective Immediately), issued November 16, 1993, the license was modified to prohibit Dr. Bauer from engaging in activities under the license and to suspend the Licensee's authority to receive and use licensed material.

On November 11, 1993, the NRC performed an inspection at the Licensee's facility in Indiana, Pennsylvania. During the inspection, the NRC found that Dr. Bauer had used the Licensee's strontium-90 source to perform treatments of two patients for skin lesions on several occasions between September and November 1993, even though the license does not authorize the use of the strontium-90 for any purpose other than the treatment of superficial eye conditions. Since the use of the strontium-90 source for treatment of skin lesions not involving the eye is not authorized by the license, a violation of the license occurred.

Prior to identifying that violation during the inspection, the inspectors asked Dr. Bauer, as the Radiation Safety Officer and only authorized user listed on the license, about the treatment modalities for which the strontium-90 source was used. Dr. Bauer stated that the source had been used for the treatment of pterygium, an eye condition. When the inspectors asked Dr. Bauer whether the source had ever been used for any other modality, he again replied that the source had been used to treat pterygium.

The inspectors then requested records of the last six patients who received treatment with the strontium-90 source. The records provided to the inspectors reflected only eye treatments. Subsequently, the inspectors performed a review of the patient

treatment log maintained by Dr. Bauer's secretary, as well as a review of records of additional patient treatments. The inspectors learned that the records initially provided were not for the last six patients treated, and that the records of the last six patient treatments included treatments for superficial lesions of the skin using the strontium-90 source, including a treatment that occurred on the day of the inspection before the inspection took place.

Dr. Bauer's failure to inform the inspectors that he had used the strontium-90 source to treat lesions of the skin, when specifically asked if the source was used for any purpose other than superficial eye treatments, caused the Indiana Regional Cancer Center to violate the requirements of 10 CFR 30.9, in that Dr. Bauer failed to provide information that was complete and accurate in all material respects to the NRC. In addition, in view of Bauer's use of the strontium-90 source for treatment of skin lesions prior to and on the day of the inspection, Dr. Bauer's communications to the inspector also constitute a violation of 10 CFR 30.10, in that Dr. Bauer deliberately provided to the NRC information that he knew to be incomplete or inaccurate in some material respect.

Previously, Dr. Bauer was involved in an incident in November 1992 at the Indiana Regional Cancer Center, as an authorized user and the supervisor of a treatment with a High Dose Rate Remote Afterloader (under Byproduct Materials License No. 37-28540-01 issued to Oncology Services Corporation), that resulted in a

patient being exposed to significant levels of radiation, and numerous other members of the public being exposed to unnecessary radiation. Dr. Bauer had failed to cause a survey to be performed which was required by 10 CFR 20.201 and which could have prevented the exposures.

Based on the above, the NRC issued a Demand for Information (Demand) to Dr. Bauer on November 16, 1993. The Demand required Dr. Bauer to state: (1) why the NRC should not issue an Order prohibiting Dr. Bauer's involvement in all NRC licensed activities; and (2) if such an Order should not be issued, why the NRC should have confidence that Dr. Bauer would comply with all Commission requirements. The Demand also required Dr. Bauer to state each institution and location at which Dr. Bauer engages in licensed activities.

In a letter dated January 5, 1994, Dr. Bauer, through his counsel, responded to the Demand for Information. The response stated that Dr. Bauer was a highly competent board certified radiation oncologist and radiologist with in excess of thirty years of experience in the safe use of radioactive materials; listed a number of areas where the licensee was found to be in compliance with NRC requirements and noted that there were no radiation safety violations, no harm to any individuals, and no risk to the public health and safety; stated that Dr. Bauer believed he was permitted to use the strontium-90 source for superficial skin lesion

treatments; stated that Dr. Bauer fully and truthfully responded to all questions, and provided all requested information to the inspectors during the November 11, 1993 inspection; noted that the NRC had not attempted to levy any civil penalty for Dr. Bauer's alleged "failure to do an adequate survey in November 1992", and stated that the NRC has admitted that Dr. Bauer did not violate any license condition in November 1992 by allegedly failing to do an adequate survey; noted that the licensee's past performance has been exemplary; stated that there is no basis for the NRC to believe that Dr. Bauer will not comply with all Commission requirements, noting that he has in the past and will at all times in the future continue to use his best efforts to fully comply with all Commission requirements; stated that there has never been any finding that Dr. Bauer willfully or negligently violated any federal regulations or that he improperly uses radioactive material; and argued that to bar Dr. Bauer from any future licensed activities would constitute a travesty of justice to Dr. Bauer, the patients who rely on him, and society in general.

III

Based on the above, and after giving due consideration to his response to the Demand for Information, it appears that Dr. Bauer has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 30.9; deliberately provided to NRC inspectors information that he knew to be incomplete or inaccurate

in some respect material to the NRC, in violation of 10 CFR 30.10; and failed to conduct a required survey on November 16, 1992, which resulted in unnecessary radiation exposure to members of the public and a significant misadministration. The NRC must be able to rely on the Licensee and its employees, especially its authorized users and Radiation Safety Officer, to comply with all NRC requirements, including the requirement to provide information to the NRC that is complete and accurate in all material respects. Dr. Bauer's action in causing the Indiana Regional Cancer Center to violate 10 CFR 30.9 and his violation of 10 CFR 30.10 through deliberate misrepresentations to the NRC, as well as his failure to perform the required survey noted above, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Dr. Bauer is the sole authorized user and the Radiation Safety Officer on NRC License No. 37-28179. As such, Dr. Bauer is required to know the requirements of the License and adhere to them. Dr. Bauer is not permitted to select those requirements that he will follow.

Consequently, I lack 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 Dr. Bauer were permitted at this time to be named in any capacity on an NRC license or were permitted to

otherwise perform licensed activities. Therefore, the public health, safety and interest require that Dr. Bauer be prohibited from being named on an NRC license in any capacity and from otherwise performing licensed activities for a period of five years from the date of this Order. For an additional two years, the public health, safety, and interest require that Dr. Bauer be required to notify the NRC of any involvement in licensed activities to assure that the NRC can monitor the status of Dr. Bauer's compliance with the Commission's regulatory requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and Dr. Bauer's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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, EFFECTIVE IMMEDIATELY, THAT:

- A. Dr. James Bauer, M.D., is prohibited for five (5) years from the date of this Order from being named on an NRC license in any capacity or from otherwise performing NRC-licensed activities.

B. For an additional two year period following the five year prohibition in Paragraph IV.A. above, Dr. Bauer shall, within 20 days of his acceptance of an employment offer involving NRC-licensed activities or becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the licensed entity where the licensed activities are or will be conducted.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. Bauer of good cause.

In accordance with 10 CFR 2.202, Dr. Bauer must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Bauer or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing

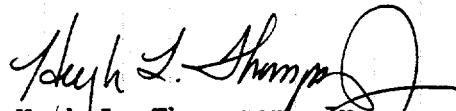
shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406 and to Dr. Bauer if the answer or hearing request is by a person other than Dr. Bauer. If a person other than Dr. Bauer requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Bauer or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Bauer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations Support

Dated at Rockville, Maryland
this 10th day of May 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-95-21

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DR. JAMES E. BAUER

(Order Prohibiting
Involvement in NRC-Licensed
Activities)

Docket No. IA-94-011

ASLBP No. 94-696-05-EA

November 13, 1995

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

By immediately effective order dated May 10, 1994, the NRC staff (1) prohibited Dr. James E. Bauer from being named on an NRC license in any capacity and from otherwise performing licensed activities for a period of five years from the date of the order; and (2) required for two years thereafter that Dr. Bauer notify the NRC of any involvement in licensed activities to assure that the NRC can monitor the status of Dr. Bauer's compliance with the Commission's regulatory requirements. See 59 Fed. Reg. 25,673 (1994). This proceeding was convened at the request of Dr. Bauer to contest the validity of the staff's order. See 59 Fed. Reg. 30,376 (1994). Now, by joint motion dated November 2, 1995, Dr. Bauer and the staff request that we approve a settlement agreement they have provided and dismiss this proceeding.

9503501

Among other things, the settlement agreement reduces to three years the prohibition on Dr. Bauer's involvement in licensed activities. It also outlines the staff's agreement not to take any additional enforcement action against Dr. Bauer based on either the facts set forth in the May 10, 1994 order or the facts and assertions revealed by a related staff investigation (No. 1-93-065R). Additionally, it provides that the settlement should not be considered as either an admission regarding or a resolution of any of the matters that formed the basis for the May 1994 staff enforcement order.

Pursuant to section 81 and subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. §§ 2111, 2201(b), 2201(o), and 10 C.F.R. § 2.203, we have reviewed the parties' settlement accord 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 that both actions are consonant with the public interest. Accordingly, we grant the parties' joint motion

to approve the settlement agreement and dismiss this proceeding.

For the foregoing reasons, it is this thirteenth day of November 1995, ORDERED, that:

1. The November 2, 1995 joint motion of the parties is granted and we approve their November 3, 1995 "Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.¹

¹ The settlement agreement attached to the parties' November 2, 1995 motion was dated November 1, 1995. This document was a facsimile copy that did not have the original signatures of Dr. Bauer and his counsel. By letter dated November 7, 1995, staff counsel provided the settlement agreement with the original signatures of Dr. Bauer and his counsel. This document, which is dated November 3, 1995, is attached to this memorandum and order.

2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD²

G. Paul Bollwerk, III
G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Charles N. Kelber
Charles N. Kelber
ADMINISTRATIVE JUDGE

Peter S. Lam
Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 13, 1995

² Copies of this memorandum and order are being sent this date to counsel for Dr. Bauer by facsimile transmission and to staff counsel (without the accompanying attachment) by E-mail transmission 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)
DR. JAMES E. BAUER) Docket No. IA-94-011
(Order Prohibiting Involvement) ASLBP No. 94-696-05-EA
in NRC-Licensed Activities)

SETTLEMENT AGREEMENT

On May 10, 1994, the staff of the Nuclear Regulatory Commission (Staff) issued an "Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)" (Staff's Order) to Dr. James E. Bauer. 59 Fed. Reg. 25673 (May 17, 1994). On May 26, 1994, Dr. Bauer answered the Staff's Order, denying the violations alleged in the Staff's Order and requesting a hearing. "Answer and Request for Hearing of James E. Bauer, M.D. M.Div. to May 10, 1994 Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)."

The parties to the above-captioned proceeding, the Staff and James E. Bauer, M.D., agree that it is in the public interest to terminate the above-captioned proceeding, without further litigation and agree to the following terms and conditions:

1. Dr. Bauer agrees to withdraw his request for a hearing, dated May 26, 1994.
2. Dr. Bauer further agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities for a period of three years from the date of the Order Prohibiting Involvement in NRC-Licensed Activities, *i.e.*, from May 10, 1994 through

May 10, 1997. Such prohibition includes any and all 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 C.F.R. § 150.20.

3. For a period of two years following the above-specified three year period, *i.e.*, from May 10, 1997 through May 10, 1999 in the event that Dr. Bauer becomes involved with NRC-licensed activities, Dr. Bauer agrees to provide, within 20 days of his acceptance of any employment offer involving NRC-licensed activities or any time he otherwise becomes involved in NRC-licensed activities, written notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 of the name, address, and telephone number of the employer or the licensed entity where the licensed activities are or will be conducted and a detailed description of his duties and activities in which he is or will be involved.

4. In consideration of Dr. Bauer's agreement to the conditions of paragraphs 2 and 3 of this Settlement Agreement, the Staff agrees not to take any further enforcement action against Dr. Bauer based on a) the same facts outlined in the Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately), dated May 10, 1994 and b) any other facts or assertions revealed as a result of the NRC's Office of Investigation's investigation (No. 1-93-065R) relating to Dr. Bauer's activities. In the event that Dr. Bauer fails to comply with the conditions set forth in either paragraph 2 or 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 Dr. Bauer understand and agree that this Settlement Agreement is limited to the issues in and the parties to the above-captioned proceeding.

6. The Staff and Dr. Bauer agree that this Settlement Agreement does not constitute and should not be construed to constitute any admission or admissions in any regard by Dr. Bauer regarding any matters set forth by the NRC in the Order Prohibiting Involvement in NRC-Licensed Activities.

7. The Staff and Dr. Bauer also agree that the matters upon which the Order is based have not been resolved as a result of this Settlement Agreement. This Settlement Agreement shall not be relied upon by any person or other entity as proof or evidence of any of the matters set forth in the Order Prohibiting Involvement in NRC-Licensed Activities.

8. The Staff and Dr. Bauer shall jointly move the Atomic Safety and Licensing Board for an order approving this Settlement Agreement and terminating the above-captioned proceeding.

FOR JAMES E. BAUER, M.D.:



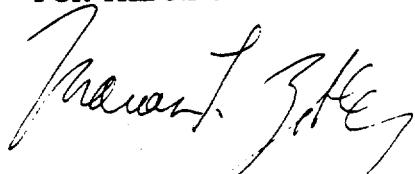
Marcy L. Colkitt
Counsel for James E. Bauer, M.D.



James E. Bauer, M.D.

Dated Rockville, Maryland
this 3 day of November, 1995

FOR THE NRC STAFF:



Marian L. Zobler
Counsel for NRC Staff



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

AUG 26 1994

IA 94-020

Mr. Paul A. Bauman
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

Dear Mr. Bauman

SUBJECT: ORDER REQUIRING NOTIFICATION TO NRC PRIOR TO INVOLVEMENT IN NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order Requiring Notification of Involvement in NRC-Licensed Activities (Effective Immediately) is being issued as a consequence of your actions while employed by the American Inspection Company, Inc., (AMSPEC) between late 1989 and March 1, 1992. The NRC Office of Investigations (OI) conducted an investigation and concluded that you deliberately: (1) falsified employee training records of numerous radiography employees of AMSPEC; (2) failed to train numerous radiography employees of AMSPEC; (3) provided examinees with answers to examination questions and personally aided and assisted employees in order to achieve required test scores; (4) provided false information to the Commission regarding the qualification of AMSPEC employees in an NRC license amendment application; (5) falsified records of quarterly personnel radiation safety audits; and (6) submitted false information regarding the training and qualification of two individuals to the Commission in an application for an NRC license renewal. As detailed in the enclosed Order, your actions caused AMSPEC to be in violation of 10 CFR 30.9, 34.11, and 34.31 of the Commission's requirements.

Your assistance to the United States Attorney in his development of cases against others is appreciated. As a result, we are not prohibiting you from working in NRC-licensed activities. However, we believe that it is appropriate that the NRC be notified when you become involved in NRC licensed activities. Therefore, the enclosed order is being issued to you. Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Paul A. Bauman

)
)
)
)

IA 94-020

ORDER REQUIRING NOTIFICATION PRIOR TO
INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Paul A. Bauman has been employed in the field of industrial radiography since approximately 1981. In April 1987, Mr. Bauman was hired by the American Inspection Company, Inc., (Licensee or AMSPEC). AMSPEC held Materials License No. 12-24801-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the License was suspended as a result of significant safety violations and related safety concerns. Mr. Bauman was a Vice President and Radiation Protection Officer of AMSPEC when a majority of the violations discussed below occurred.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the License was suspended because a significant number of safety violations were uncovered. In addition, the investigation revealed that Mr. Bauman, in his capacity as a Vice President and Radiation Protection Officer of AMSPEC, deliberately: (1) falsified employee training records of numerous radiography employees of AMSPEC; (2) failed to train and certify numerous radiography employees of AMSPEC; (3)

provided examinees answers to examination questions and personally aided and assisted employees in order to achieve required test scores; (4) provided, with co-conspirator Daniel McCool, false information to the Commission regarding the qualification of AMSPEC employees in an NRC license amendment application; (5) falsified records of quarterly personnel radiation safety audits; and (6) submitted false information regarding the training and qualification of two individuals to the Commission in an application for an NRC license renewal.

10 CFR 34.31(a) provides that a licensee shall not permit any individual to act as a radiographer until such individual: (1) has been instructed in the subjects outlined in Appendix A of 10 CFR Part 34; (2) has received copies of and instruction in NRC regulations contained in 10 CFR Part 34 and in the applicable sections of 10 CFR Parts 19 and 20, NRC license(s) under which the radiographer will perform radiography, and the licensee's operating and emergency procedures; (3) has demonstrated competence to use the licensee's radiographic exposure devices, sealed sources, related handling tools, and survey instruments; and (4) has demonstrated understanding of the instructions in this paragraph by successful completion of a written test and field examination on the subjects covered. AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual prescribes the licensee's employee training program to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. In addition, 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that includes the observation of the performance of each radiographer and radiographer's assistant during an actual radiographic

operation at intervals not to exceed three months. AMSPEC had an approved audit program that was incorporated as part of License Condition 17 to meet the requirements of 10 CFR 34.11(d)(1). 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or term of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Between late 1989 and March 1, 1992, Mr. Bauman deliberately caused AMSPEC to violate 10 CFR 34.31 by failing to train and certify numerous radiography employees of AMSPEC as required and caused AMSPEC to violate 10 CFR 30.9 by deliberately falsifying training records to show that numerous employees of AMSPEC stationed at the Hess facility on St. Croix were properly trained in radiation safety. During 1990 and 1991, Mr. Bauman violated License Condition 17 by providing unauthorized and improper aid to AMSPEC employees taking radiation safety examinations in that Mr. Bauman: (1) allowed the use of reference material during closed-book examinations; (2) permitted examinees to complete examinations in an untimed, unmonitored setting; and (3) directly provided the examinees with answers to test questions. In June of 1990, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 by preparing an NRC license amendment letter to the NRC that deliberately contained false information regarding the qualification of three AMSPEC employees. In July and August of

1991, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 and 10 CFR 34.11 by deliberately falsifying records of quarterly personnel radiation safety audits. In November of 1991, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 by conspiring with and directing his secretary to physically write answers on a required radiation safety test by annotating on the test the name of an AMSPEC employee and placing it in that employee's radiation safety records. Mr. Bauman violated 10 CFR 30.10 by deliberately submitting false information regarding the training and qualification of two individuals to the Commission in a December 20, 1991 application for an NRC license renewal.

On December 17, 1992, Mr. Bauman pled guilty to two felony counts. The first count involved conspiracy to violate 42 U.S.C. 2273 (section 223 of the Atomic Energy Act). The second count consisted of deliberately providing false information to the NRC in violation of 42 U.S.C. 2273 and 42 U.S.C. 2201b (section 161b of the Atomic Energy Act) and 10 CFR 30.9 and 10 CFR 30.10(a)(2) of the Commission's regulations.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. As a Vice President and Radiation Protection Officer (RPO) of AMSPEC, Mr. Bauman was responsible for ensuring that the Commission's regulations and license conditions were met and that records which were required to demonstrate compliance with the Commission's regulations and license conditions were true and accurate in all material aspects. Mr. Bauman's deliberate actions in

causing the Licensee to violate 10 CFR 30.9, 34.11, and 34.31 and License Condition 17, and his deliberate misrepresentations to the NRC, are unacceptable and raise a question as to whether he can be relied on at this time to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, the NRC needs the capability to monitor his performance of licensed activities in order to be able to maintain 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. Bauman is employed in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of three years from the date of this Order, Mr. Bauman shall notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Bauman's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

For a period of three years from the date of the Order, Paul A. Bauman shall: Within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. NRC-licensed activities are those activities which 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. In the first notification Mr. Bauman shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Paul A. Bauman must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and

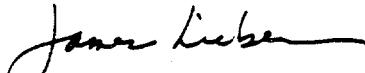
shall set forth the matters of fact and law on which Mr. Bauman or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Paul A. Bauman if the answer or hearing request is by a person other than Paul A. Bauman. If a person other than Paul A. Bauman requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Paul A. Bauman or another 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Paul A. Bauman, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 20th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

November 15, 1994

IA 94-032

Michael J. Berna
[ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC INSPECTION REPORT NO. 030-04325-92001)
(NRC INVESTIGATION REPORT NO. 3-92-035R)

Dear Mr. Berna:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (Order) is being issued as a consequence of your actions while employed as the Radiation Safety Officer at the Amoco Refinery, Whiting, Indiana, in 1992. This Order prohibits your involvement in NRC-licensed activities for a period of three years from the date of this 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.

Questions concerning this Order may be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

FOR THE NUCLEAR REGULATORY COMMISSION

Hugh L. Thompson Jr.
Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosures:

1. Order Prohibiting Involvement
in NRC Licensed Activities
2. Notice of Violation and Proposed
Imposition of Civil Penalties to Amoco

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MICHAEL J. BERNA

IA 94-032

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Amoco Oil Company (Amoco or Licensee) was the holder of Byproduct Material License No. 13-00155-10 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorized the use of byproduct material (iridium-192 and cobalt-60) for industrial radiography in devices approved by the NRC or an Agreement State. The facility where licensed materials were authorized for use and storage was located at 2815 Indianapolis Boulevard, Whiting, Indiana. The use of licensed material was authorized at temporary job sites anywhere in the United States where the United States Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material. The License was originally issued on February 4, 1958, and was terminated on October 19, 1993.

Mr. Michael J. Berna performed duties as the Licensee's Radiation Safety Officer (RSO) from March 1990 until he was relieved of those duties on October 16, 1992.

II

On July 27, 1992, the NRC Region III office received information that Mr. Berna had not conducted field audits of radiographers and radiographer's assistants as required by license conditions and that Mr. Berna fabricated reports for the audits that he did not perform by documenting that the audits

had been performed. The NRC conducted an inspection at the Licensee's Whiting, Indiana, refinery from September 15 to October 9, 1992. The NRC Office of Investigations (OI) subsequently conducted an investigation. The Licensee conducted an investigation contemporaneously with the NRC inspection and investigation. Deliberate violations of NRC requirements were identified as a result of the NRC inspection and the investigation.

Condition 18.A of License No. 13-00155-10 incorporates the statements, representations, and procedures contained in the license application dated March 28, 1990. Item 10.3 of that application required, in part, that practicing radiographers and radiographer's assistants are to be audited at intervals not to exceed 3 months to meet the requirements of 10 CFR Part 34 and the Licensee's Operating and Emergency Procedures, and that the audits should be unannounced insofar as possible. Item 10.5 of that application required, in part, that certain records be generated and maintained, including a record of quarterly audits of radiographers and radiographer's assistants.

Mr. Berna admitted to the NRC in a sworn, transcribed interview on October 7, 1992, that he knowingly failed to perform the required audits and that he deliberately falsified records to show that audits had been performed on at least ten occasions (February 6, 10, 12, and 29, April 11, 22, 24, and 29, May 12, and September 1, 1992).

In addition, during the September 15, 1992, inspection the NRC inspector asked Mr. Berna if the field audits of radiographers and radiographer's assistants were unannounced. Mr. Berna told the NRC inspector that he did not give any advance notification to radiography personnel. However, the testimony of

eight radiographers or radiographer's assistants indicated that Mr. Berna always informed them when he would be performing an audit.

Testimony provided by an Assistant Radiation Safety Officer (RSO) on November 5, 1992, indicated that at the request of Mr. Berna on or about September 15, 1992, the RSO falsified at least two records of audits of radiographers and radiographer's assistants for May 1992. Also, testimony provided to OI by another RSO on December 17, 1992, indicated that at the request of Mr. Berna during August 1991, this RSO falsified at least two records of audits of radiographers and radiographer's assistants.

These actions are contrary to the audit requirements and the records generation and maintenance requirements of the License, and a violation of 10 CFR 30.9(a), "Completeness and Accuracy of Information," and 10 CFR 30.10(a)(1) and (2), "Deliberate Misconduct," of the Commission's regulations.

The Licensee conducted an internal investigation and based on the results of its investigation the Licensee suspended Mr. Berna's employment for one month without pay. On December 1, 1992, a Confirmatory Order Modifying License (Effective Immediately) was issued to the Licensee, which confirmed, among other things, that the Licensee would prohibit Mr. Berna from participating in any NRC licensed activities, including the position of RSO.

III

Based on the above, it appears that Mr. Berna engaged in deliberate misconduct from August 1991 through approximately September 15, 1992, by failing to conduct field audits of radiographers and radiographer's assistants at the interval specified in the NRC Byproduct Material License, and by creating false records for audits which he did not conduct, thus making the record appear as though a field audit was performed at the specified interval. Mr. Berna also engaged in deliberate misconduct when he requested two ARSOs to falsify field audit records. Mr. Berna engaged in additional misconduct when he told an NRC inspector that field audits of radiographers or radiographer's assistants were unannounced. Mr. Berna's actions caused the Licensee to be in violation of the Amoco License, as well as 10 CFR 30.9, and constituted violations of 10 CFR 30.10 of the Commission's regulations. As the Licensee's RSO, Mr. Berna supervised the radiation safety program associated with NRC Byproduct Material License No. 13-00155-10 and was responsible for ensuring that the Commission's regulations and license conditions were met.

Consequently, I lack 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. Berna were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Berna be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Berna is required to notify the NRC of his first employment in NRC-licensed activities licensed by the NRC following the prohibition period. Furthermore, pursuant to 10 CFR

2.202, I find that the significance of Mr. Berna's conduct described above is such that the public health, safety and interest require that this Order be immediately effective. A longer period was not imposed because of the issuance of the December 1, 1992 Confirmatory Order Modifying License (Effective Immediately).

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, 10 CFR Part 30, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Michael J. Berna is prohibited for three years from the date of this Order from 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.
- B. The first time Mr. Berna is employed in NRC-licensed activities following the three-year prohibition, he shall, within 20 days of his acceptance of the employment offer involving NRC-licensed activities, notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and the Regional Administrator, NRC Region III. The notice shall include the name, address, and telephone number of the employer or the entity where he is, or will be, involved

in the NRC-licensed activities. In the first notification, Mr. Berna shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Mr. Berna must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Berna or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Berna, if the answer or hearing request is by a person other than Mr. Berna. If a person other than Mr. Berna requests a hearing, that person

shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Berna or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Berna, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 5th day of November 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

SEP 8 1994

Docket No. 030-02551
License No. 29-12417-01
IA 94-023

Jerome E. Bodian, M.D.
[HOME ADDRESS DELETED
UNDER 2.790]

Dear Dr. Bodian:

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

On June 24, 1993, the NRC sent you a Demand for Information (DFI) based on several apparent violations of NRC requirements including (1) administration of doses to patients without first checking the dose in a dose calibrator, and (2) making false statements to the NRC during an NRC inspection at your facility on April 6, 1992, and subsequent telephone conversation on April 7, 1992 with NRC staff. The DFI required, in part, that you provide the reasons why, in light of the apparent violations described therein, the NRC should not issue an Order that precludes you from any involvement in NRC licensed activities in the future.

In your sworn response dated July 20, 1993, to the DFI, you: (1) stated that on infrequent occasions, a precalibrated dose of radioiodine was administered without prior use of a dose calibrator; (2) reiterated a previous request that your license be terminated; and (3) pointed out that you have never used the Englewood Hospital's license on a personal basis and any administration of radiopharmaceuticals to your patients at the Englewood Hospital was done under the supervision of the hospital radiology department.

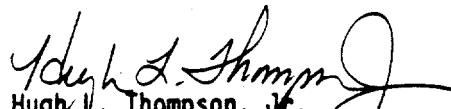
Based on a NRC Office of Investigation report issued on July 26, 1993, the NRC Staff has determined that you deliberately failed to measure doses before administration to patients, and deliberately provided inaccurate information to the NRC during the April 6, 1992 inspection and the April 7, 1992 telephone conversation. A copy of the synopsis of the investigation is enclosed.

Although the NRC issued amendment No. 07 on September 27, 1993, terminating your license, in telephone conversations between Dr. Ronald R. Bellamy of the NRC Region I office and yourself on July 18, 19, and 20, 1994, you agreed to the issuance of an Order that would confirm that you would not participate in activities licensed by the NRC at any facility for a period of five years, and would notify the NRC the first time (if any) you engage in licensed activities after the five year prohibition expires. The enclosed Confirmatory Order (Effective Immediately) confirms these commitments.

Question concerning the Order may be addressed to Ms. Patricia Santiago, Assistant Director for Materials, Office of Enforcement, at telephone number (301) 504-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosures:

1. Confirmatory Order (Effective Immediately)
2. OI Report Synopsis

cc w/encls:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
State of New Jersey
Englewood Hospital

SYNOPSIS

On May 22, 1992, the Office of Investigations (OI), U.S. Nuclear Regulatory Commission (NRC), Field Office Region I, initiated an investigation to determine if the licensee intentionally violated NRC regulations by providing inaccurate and/or false information to NRC staff during an April 6, 1992, inspection, and April 7, 1992, telephone conversation. Specifically, the information concerned the licensee having doses of iodine-131 (I-131) assayed by a technologist at Englewood Hospital (EH) prior to the administration of the I-131 to patients.

Based on the evidence, OI concludes that the licensee deliberately failed to measure the activity of each radiopharmaceutical dose before medical use. In addition, the licensee deliberately provided inaccurate and/or false information to NRC staff during the April 6, 1992, inspection and April 7, 1992, telephone conversation.

OI also concludes that the licensee deliberately failed to conduct annual survey meter calibrations.

There is insufficient evidence to conclude that the licensee deliberately failed to possess a dose calibrator for the measurement of patient doses. There is also insufficient evidence to conclude that the licensee deliberately failed to possess appropriate radiation detection and radiation measurement survey instrumentation.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) Docket No. 030-02551
JEROME E. BODIAN M.D.) License No. 29-12417-01
Englewood, New Jersey) IA 94-023

CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

I

Jerome E. Bodian (Licensee or Dr. Bodian) was the holder of NRC License No. 29-12417-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on September 11, 1967 and last renewed in its entirety on August 20, 1990. The License authorized the Licensee to possess and use iodine-131 as iodide for uptake studies, thyroid imaging, and the treatment of hypothyroidism and cardiac dysfunction. The License was due to expire on August 30, 1995; however on January 25, 1993, the Licensee requested that the License be terminated. The NRC granted this request for termination, and Amendment No. 07 was issued to the Licensee on September 27, 1993, terminating the License.

II

On April 6, 1992, an NRC inspection was conducted at the Licensee's facility in Englewood, New Jersey. During the inspection, the NRC identified several violations of NRC requirements, including the failure to possess and use a dose calibrator to assay therapeutic doses of iodine-131 prior to administration to patients. Also during the inspection, Dr. Bodian told the inspector that he took doses of iodine-131 to Englewood Hospital for calibration. During a telephone conversation with Region I staff on April 7, 1992, Dr. Bodian stated that. (I) although he did not possess a dose

calibrator, he had a technologist at Englewood Hospital perform the dose measurements for almost all patients he had treated; (2) all measurements of doses were within \pm 10 percent of the prescribed dose; and (3) the results of these measurements were recorded in the patient charts.

Shortly after the inspection, the NRC issued a Confirmatory Action Letter to the Licensee on April 9, 1992, which confirmed, in part, the Licensee's agreement to terminate patient treatments with any radiopharmaceutical authorized by the NRC until such time as the Licensee established, and submitted to the NRC for approval, a program that included all of the required equipment and procedures required by 10 CFR Part 35. Such a program was not established and patient treatment has not resumed. The NRC Office of Investigations initiated an investigation on May 22, 1992. Dr. Bodian requested, in a letter dated January 25, 1993, that the License be terminated.

In view of Dr. Bodian's willful failure to adhere to NRC requirements, as well as the apparently willful failure to provide complete and accurate information to the NRC, thereby endangering patients to whom the doses were administered, the NRC needed certain information to determine whether there existed reasonable assurance that Dr. Bodian's activities conducted under other NRC licenses would be performed safely and in accordance with requirements. Accordingly, a Demand for Information (DFI) was issued to Dr. Bodian on June 24, 1993, that requested him to list all NRC licenses on which he was then listed as an authorized user, and to explain why the NRC should not issue an order to preclude him from any involvement in licensed activities in the future.

On July 20, 1993, Dr. Bodian responded to the Demand for Information stating that (1) on infrequent occasions a precalibrated dose of radioiodine was administered without prior use of dose calibrator; (2) a request for termination of his license (No. 29-12417-01) was made on January 25, 1993; and (3) his listing (as an authorized user) on the Englewood Hospital license (No. 29-08519-01) was a carry over from years ago, and that any administration of radiopharmaceuticals to his patients at Englewood Hospital was done under the supervision of the hospital radiology department.

The NRC OI report issued July 26, 1993 determined that notwithstanding Dr. Bodian's statements to the NRC, the doses, with a few exceptions, were not assayed with a dose calibrator prior to administration, even though Dr. Bodian was aware that such assays were required. This finding is based on the fact that although the Licensee's records indicate that 30 iodine-131 doses were provided to patients between January 1990 and April 1992, the NRC has found that most doses were not assayed for the Licensee in the Hospital's dose calibrator during that time. This willful failure to adhere to this requirement, as well as the willful false statements to the NRC during the inspection on April 6, 1992 and the April 7, 1992 telephone conversation, constitute violations of 10 CFR 35.53, 10 CFR 30.9, and 10 CFR 30.10.

III

Based on the above, it appears that Dr. Bodian, the Licensee, engaged in deliberate misconduct that constitutes a violation of 10 CFR 30.10(a)(1) and that has caused the Licensee to be in violation of 10 CFR 35.53. It further

appears that Dr. Bodian deliberately provided to NRC inspectors information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.09 and 10 CFR 30.10(a)(2). Dr. Bodian has demonstrated an unwillingness to comply with Commission requirements. NRC must be able to rely on its licensees to comply with NRC requirements, including the requirement to provide complete and accurate information. Willful violations are of particular concern to the Commission because they undermine the Commission's reasonable assurance that licensed activities will be conducted in accordance with NRC requirements. Dr. Bodian's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. Consequently, protection of the public health, safety and interest require that Dr. Bodian be prohibited from engaging in NRC-licensed activities for a period of 5 years and to notify the NRC prior to resumption of any NRC-licensed activities at any facility after termination of the five year prohibition.

In telephone conversations on July 18, 19, and 20, 1994, with Dr. Ronald R. Bellamy of the NRC Region I office, Dr. Bodian agreed not to be involved in any NRC-licensed activities for a period of five years, and to notify the NRC prior to resumption of any licensed activities at any facility after that five year prohibition. I find that the Dr. Bodian's commitments as set forth in that conversation are acceptable and necessary and conclude that with these commitments the protection of the public health and safety is reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Dr. Bodian's commitments in the telephone

conversations of July 18, 19, and 20, 1994 be confirmed by this Order. Dr. Bodian has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined that the significance of the violations described above is such that the public health and safety require that this Order be immediately effective.

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 Parts 30 and 35, IT IS HEREBY ORDERED THAT:

1. For a period of five years from the date of this Confirmatory Order, Jerome E. Bodian, M.D., shall not engage in any NRC-licensed activities. NRC-licensed activities are those activities which 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. When, for the first time, Dr. Bodian is employed in NRC-licensed activities following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, within 20 days prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC

jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon a showing by Dr. Bodian of good cause.

V

Any person adversely affected by this Confirmatory Order (Effective Immediately), other than Dr. Bodian, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Bodian. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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 (Effective Immediately) should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order, other than Dr. Bodian, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 8th day of September 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

JUL 14 1994

IA 94-015

Mr. John W. Boomer
ADDRESS DELETED

Dear Mr. Boomer:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)**

The enclosed Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately) is being issued as a consequence of your deliberate violation of 10 CFR 35.70(e) and 10 CFR 30.10 while President of Chesapeake Imaging Center, Chesapeake, West Virginia. Based on an investigation conducted by the NRC's Office of Investigations (OI), the NRC staff has determined that you deliberately violated NRC requirements by failing to conduct weekly surveys for removable contamination. After being advised by your staff of the regulatory requirement and the fact that instrumentation was not available to perform the required survey, you failed to provide the required instrumentation and permitted licensed activities to continue. A copy of the synopsis of the OI investigation was provided to you by letter dated December 2, 1993, and again by letter dated February 28, 1994. An enforcement conference by telephone was held with you on March 8, 1994. The summary of this conference was sent to you on March 16, 1994.

Such conduct is unacceptable to the NRC. Therefore, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately). Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your address deleted and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement In NRC-Licensed Activities
(Effective Immediately)

cc w/enclosure
Public Document Room

State of West Virginia, Director
Department of Public Health
State of California, Director
Department of Public Health
All States

Chesapeake Imaging Center, Inc.
11940 MacCorkle Avenue
Chesapeake, West Virginia 25315

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John W. Boomer
ADDRESS DELETED

IA 94-015

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

John W. Boomer has been a nuclear medicine technologist since 1972. On February 11, 1993, Mr. Boomer, as the President of Chesapeake Imaging Center, Inc. (CIC or Licensee) applied for an NRC license. On March 23, 1993 Materials License No. 47-25238-01 was issued to CIC by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorized the possession and use of radiopharmaceuticals for nuclear medicine activities in accordance with the conditions specified therein. The license was terminated this date.

II

On July 30, 1993, the NRC conducted an initial inspection of CIC at its facility located in Chesapeake, West Virginia. As a result of the inspection, multiple violations of NRC requirements were identified. One specific violation identified involved the failure to perform weekly surveys for removable contamination in the nuclear medicine department between March 24 and July 30, 1993. As a result of this inspection, a Notice of Violation is being issued contemporaneously with this Order.

Between August 3 and September 30, 1993, an investigation was conducted by the NRC Office of Investigations (OI) to determine if certain violations identified during the July 30, 1993, inspection were the result of deliberate misconduct. Based on investigative findings, the NRC staff concludes that Mr. Boomer deliberately caused CIC to violate the requirement to perform the weekly contamination surveys, after being advised by the CIC facility Manager and CIC technical consultant that such surveys were required. Mr. Boomer was aware of the NRC requirement to perform weekly contamination surveys, yet deliberately failed to meet the requirement in violation of 10 CFR 35.70(e) and 10 CFR 30.10.

A transcribed telephone enforcement conference between the NRC staff and Mr. Boomer was held on March 8, 1994. Mr. Boomer indicated during the enforcement conference that he had significant difficulties in obtaining the funds from investors and did not recognize the severity of the noncompliance but rather focused on the needs of patients traveling miles to obtain the studies. Mr. Boomer also stated during the enforcement conference that he did accept responsibility for not obtaining the equipment in a more timely fashion and for not notifying NRC and indicated that he would exercise better judgment in the future. From the discussions at the enforcement conference, the staff believes an order to remove Mr. Boomer from involvement in NRC-licensed activities is warranted based on (1) the deliberate noncompliance with the NRC's weekly survey requirement, (2) the fundamental lack of assurance that he will in the future comply with Commission requirements, (3) his position as President, (4) his approximate 20 years experience in NRC-licensed activities,

and (5) his decision to continue operations although he knew he was not in compliance with the weekly survey requirement.

III

Based on the above, Mr. Boomer engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 35.70(e). The NRC must be able to rely on the licensee and its employees to comply with NRC requirements, including the requirement to perform weekly contamination surveys. Compliance with the NRC requirement to perform weekly contamination surveys is necessary to protect members of the public as well as licensee employees from unnecessary radiation exposure that could result from undetected radioactive contamination. Performance of weekly contamination surveys is an important safety requirement intended to prevent radioactive contamination of patients, employees and other members of the public. Mr. Boomer's deliberate actions in causing the licensee to violate these requirements have raised serious doubts as to whether he can be relied on to be involved in NRC-licensed activities.

Consequently, I lack 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. Boomer were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boomer be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such

activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. During this period Mr. Boomer also shall be required to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to the time that Mr. Boomer accepts employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities. Additionally, Mr. Boomer is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Boomer's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 1611, 1610, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. John W. Boomer is prohibited for three years from the date of this Order from any involvement in NRC-licensed activities. NRC-licensed activities are those activities which 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. For a period of three years from the date of this Order, Mr. John W. Boomer shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1 above) prior to his acceptance of employment with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities.
3. The first time Mr. Boomer is employed in NRC-licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, at least five days prior to the performance of licensed activities or his being employed to perform NRC-licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed.
4. If Mr. Boomer is currently involved in NRC-licensed activities at an employer or entity, Mr. Boomer shall, in accordance with Paragraph 1 above, immediately cease such activities and provide notice within 20 days of the date of this Order to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555 of the name, address and telephone number of the employer or entity where the licensed activities are being conducted. Further, Mr. Boomer shall provide a copy of this Order to his employer if his employer is engaged in NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon a showing by Mr. Boomer of good cause.

In accordance with 10 CFR 2.202, Mr. Boomer must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boomer or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Mr. Boomer if the answer or hearing request is by a person other than Mr. Boomer. If a person other than Mr. Boomer requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boomer or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Boomer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further Order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards and
Operations Support

Dated at Rockville, Maryland
this 14th day of July 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

IA 95-029

August 7, 1995

Steven Cody
[HOME ADDRESS DELETED
10 CFR 2.790(A)]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC (EFFECTIVE IMMEDIATELY)
(NRC Investigation Report No. 3-93-014R)

Dear Mr. Cody:

The enclosed Order (Enclosure 1) is being issued as a result of an investigation conducted by the NRC Office of Investigations (OI) between November 1993 and October 1994, which found that while you were employed as a radiographer by Mid American Inspection Services, Inc. at a gas line project near Kalkaska, Michigan, from October 1992 to April 1993, you deliberately failed to supervise radiographer's assistants during radiographic operations in violation of 10 CFR 30.10, "Deliberate misconduct" and 10 CFR 34.44, "Supervision of radiographer's assistants." The violation is fully described in the enclosed Order and represents the performance of NRC licensed activities by a technically unqualified individual. Your actions also placed Mid American Inspection Services in violation of 10 CFR 34.44. A Notice of Violation (Enclosure 2) is also being issued to Mid American. The synopsis of the OI report was mailed to you on April 12, 1995, and on May 15, 1995, a transcribed enforcement conference was held by telephone.

The Order prohibits your involvement in NRC-licensed activities for one year from the date of the Order. In deciding to issue a one-year prohibition, the NRC is mindful of the fact that you have not been working as a radiographer since leaving Mid American in 1993. If you had been working as a radiographer, the period of prohibition would have been considerably longer. In addition, for three years after the one year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who deliberately violates, attempts to violate, or conspires to violate, any provision of this Order is subject to criminal prosecution as set forth in that section.

You are required to respond to this Order and should follow the instructions specified in Section V of the Order when preparing your response. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your address removed, and the enclosure will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy information or proprietary information so

that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

The responses directed by this letter and the enclosed Order are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Action of 1980, Public Law No. 96-511.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Docket No. 030-31160
License No. 21-26060-01

Enclosures:

1. Order Prohibiting Involvement in NRC Licensed Activities and Requiring Certain Notification to NRC
2. Notice of Violation to Mid American Inspection Services, Inc.

cc w/Enclosure 1:
Mid American Inspection Services, Inc.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)
)
)
)

IA 95-029

STEVEN CODY

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(IMMEDIATELY EFFECTIVE)

I

From approximately January 1990, to April 24, 1993, Steven Cody was employed as a radiographer by Mid American Inspection Services, Inc. (Mid American Inspection or Licensee). Mid American Inspection holds Byproduct Material License No. 21-26060-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on June 13, 1989. The license authorizes the use of iridium-192 in sealed sources for industrial radiography and depleted uranium as solid metal to shield exposure devices and source changers. Licensed material is authorized for use at the facility located at 1206 Effie Road, Gaylord, Michigan, and at job sites located throughout the United States where the NRC maintains jurisdiction. The license was due to expire on August 31, 1994, but is under timely renewal.

II

During the period of approximately October 1992 to April 1993 the Licensee performed industrial radiography on a gas line project near Kalkaska, Michigan. Mr. Steven Cody was a radiographer assigned to the project. As a radiographer, Mr. Cody was responsible for compliance with the Commission's regulations, including the personal supervision of any radiographic operation performed by radiographer's assistants working with him. 10 CFR 34.2 defines

a radiographer's assistant as any individual who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

On May 13, 1993, the Licensee received information that indicated that Mr. Cody routinely failed to supervise radiographer's assistants during radiographic operations at the Kalkaska, Michigan, project. On May 14, 1993, the Licensee notified the NRC Region III office of the potential violation.

The NRC Office of Investigations (OI) investigated the matter. Sworn testimony of radiographer's assistants confirmed that Mr. Cody was not always present when the assistant performed radiographic operations. The testimony indicated that at times Mr. Cody left the work site leaving the radiographer's assistant alone to conduct radiographic operations. Mr. Cody admitted to OI in a sworn statement that he sometimes left the job site while an assistant conducted radiographic operations. Mr. Cody stated to OI and during the enforcement conference that he would only leave the job site at the assistant's suggestion that the remaining radiographic operations could be performed without any assistance from Mr. Cody.

OI developed information that indicated that Mr. Cody was familiar with the NRC requirement to have a radiographer present whenever a radiographer's assistant performed radiographic operations.

Mr. Cody's failure to supervise radiographer's assistants during radiography operations is a violation of 10 CFR 34.44, "Supervision of radiographers' assistants." 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the requirements of 10 CFR 34.44, Mr. Cody was not personally present on more than one occasion at the site where sealed sources were used. Therefore, he did not have the ability to give immediate assistance if required and he could not watch the assistant's performance of radiographic operations.

Furthermore, 10 CFR 30.10 states that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: (1) would cause a licensee

to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or constitutes a violation of a procedure of a licensee.

Mr. Cody's failure to be present during radiographic operations conducted by a radiographer's assistant is a violation of 10 CFR 34.44 and his violation of that requirement is considered deliberate because Mr. Cody was fully aware of the requirements of 10 CFR 34.44, yet he intentionally elected to leave the job site.

III

Based on the above, the NRC concludes that Steven Cody engaged in deliberate misconduct that caused a violation of 10 CFR 34.44 when he failed to be personally present whenever a radiographer's assistant under his supervision performed radiographic operations. The NRC must be able to rely on its licensees and the employees of licensees, to comply with NRC requirements, including the requirement that radiographic operations cannot be conducted by a radiographer's assistant unless a radiographer is present during such operations. The deliberate violation of 10 CFR 34.44 by Mr. Cody, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Steven Cody will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Mr. Cody was

permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of one year from the date of this Order, Steven Cody be prohibited from any involvement in NRC-licensed activities for either: (1) an NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for three years commencing after the one year period of prohibition, Mr. Cody must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Cody's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Cody's conduct is such that the public health, safety, and interest require that this Order be immediately effective.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Steven Cody is prohibited for one year from the date of this Order from engaging in any 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. For three years after the above one year period of prohibition has expired Steven Cody shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Steven Cody shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

v

In accordance with 10 CFR 2.202, Steven Cody must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. When 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, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Cody or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20055, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60632-4531 if the answer or hearing request is by a person other than Mr. Cody. If a person other than Mr. Cody requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Cody or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Steven Cody, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provision specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part 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



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 7th day of August 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

MAR 22 1994

IA 94-003

Mr. Robert C. Dailey
(Address deleted)

Dear Mr. Dailey:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN CERTAIN NRC-LICENSED
OR REGULATED ACTIVITIES (EFFECTIVE IMMEDIATELY)

The NRC received Licensee Event Reports from two NRC licensees indicating that an employee of Nuclear Support Services, Inc., (NSSI) had been improperly granted unescorted access at their plants based on written requests from you certifying that the individual had met all Fitness for Duty requirements. These requests belied the fact that the individual had four past drug-related access denials at other nuclear plants since 1987. When asked about these matters by an investigator from the NRC Office of Investigations (OI Report No. 3-91-017) in January 1993, you stated that you had made the licensees aware of the past access denials while they were considering the applications for access authorization. Additional evidence obtained during the OI investigation proved this to be a false statement. Providing false information to the Commission is a violation of 10 CFR 50.5(a)(2) of the Commission's regulations.

The enclosed Order is being issued because of your violation of 10 CFR 50.5(a)(2) as described in the Order. You must respond to and comply with the Order. Failure to comply with the provisions of this Order may result in civil or criminal sanctions. Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

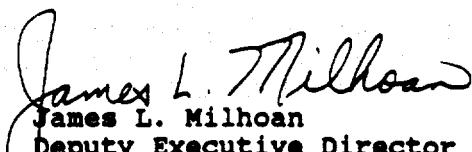
As a separate matter, an Order is being issued to NSSI requiring, among other things, that NSSI remove you from participation in NRC-licensed or regulated activities. A copy of that Order is enclosed for your information and use. As indicated in that Order, you may respond to the NSSI Order.

Robert C. Dailey

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,



James L. Milhoan
Deputy Executive Director for Nuclear
Reactor Regulation, Regional Operations
and Research

Enclosure: As stated

cc w/enclosure:

Nuclear Support Services, Inc.
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

Robert C. Dailey

)

)

IA 94-003

ORDER PROHIBITING INVOLVEMENT IN CERTAIN
NRC-LICENSED OR REGULATED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Robert C. Dailey is employed by Nuclear Support Services, Inc. (NSSI) of Hershey, Pennsylvania, as Vice President of Safety. NSSI provides health physics personnel and support to various nuclear power plants. Mr. Dailey was the NSSI Security Officer from November 1989 to May 1991. As NSSI Security Officer, Mr. Dailey was responsible for requesting unescorted access authorization for NSSI personnel to nuclear power plants which included complying with the NRC fitness-for-duty (FFD) program requirements (10 CFR Part 26).

II

Mr. Dailey, as a representative of NSSI, provided letters to NRC reactor licensees requesting unescorted access authorization for NSSI personnel and certifying that personnel met all FFD and access authorization requirements. Licensees use this information in determining whether the individual should be granted unescorted access authorization and this information is therefore material.

III

On August 14, 1991, two NRC licensees (Northern States Power Company (NSP) and Wisconsin Electric Power Company (WEPC)) submitted Licensee Event Reports (LER) to the Commission because an NSSI employee had been improperly granted unescorted access to the NSP Prairie Island plant and the WEPC Point Beach plant based on written requests for such access from Mr. Dailey which stated that the employee met all of the FFD requirements for unescorted access. However, in fact, the employee had four past drug-related access denials at other nuclear power plants since 1987. Both Licensee Event Reports noted that NSSI was aware of the past denials.

An investigation was initiated by the NRC Office of Investigations (OI). The OI investigation concluded that Mr. Dailey had sent on three occasions to Point Beach, and one occasion to Prairie Island, letters stating that the person for whom he was requesting unescorted access had met all FFD requirements and had no positive drug or alcohol use test results within the previous five years. The OI investigation concluded that the letters sent by Mr. Dailey were inaccurate because the person did have positive drug or alcohol use test results.

Despite the statements in the access authorization request letters, Mr. Dailey told the OI investigator during a January

1993 interview that he had verbally advised the appropriate NSP and WEPC security personnel of the past positive test results. These licensee representatives denied being advised of such information. Mr. Dailey's statement to the OI investigator, which was subsequently determined to be false, constitutes a violation of 10 CFR 50.5(a)(2).

IV

The NRC must be able to rely on licensee contractor personnel to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Dailey's deliberate violation of 10 CFR 50.5 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC, a licensee or an employer engaged in NRC-licensed or regulated activities.

Consequently, I lack the requisite assurance that licensed activities under NRC jurisdiction can be conducted by Mr. Dailey in compliance with the Commission's requirements. Therefore, I have concluded that the public health, safety and interest require that Mr. Dailey be prohibited from participating in NRC-licensed or regulated activities for a period of five years from the date of this Order. In addition, during the same period, should he seek employment with any person whose operations he knows or suspects involve any NRC-licensed or regulated

activities, Mr. Dailey is required to give notice of the existence of this Order to that person to assure that such employer is aware of Mr. Dailey's history and the restrictions on his activities imposed by this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 62, 63, 81, 103, 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, 10 CFR 26.27, and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY,
THAT:

1. Robert C. Dailey is prohibited for five years from the date of this Order from participating in NRC-licensed or regulated activities.
2. Should Robert C. Dailey seek employment with any person or entity whose operations he knows or has reason to believe involve any NRC-licensed or regulated activities during the five-year period from the date of this Order, Mr. Dailey shall provide a copy of this Order to such person or entity at the time Mr. Dailey

is soliciting or negotiating employment so that the person or entity is aware of the Order prior to making an employment decision.

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

VI

In accordance with 10 CFR 2.202, Robert C. Dailey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Robert C. Dailey or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the

same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Robert C. Dailey, if the answer or hearing request is by a person other than Robert C. Dailey. If a person other than Robert C. Dailey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Robert C. Dailey or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Robert C. Dailey, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the

date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director for Nuclear
Reactor Regulation, Regional Operations
and Research

Dated at Rockville, Maryland
this 1st day of March 1994

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
 USNRC

Before Administrative Judges: '94 AUG 18 P2 28

Charles Bechhoefer, Chairman
 Dr. Richard F. Cole
 Dr. Jerry R. Kline

OFFICE OF SECRETARY
 DOCKETING & SERVICE
 BRANCH

In the matter of
 NUCLEAR SUPPORT SERVICES, INC.

SERVED AUG 18 1994

EA 93-236: Order Requiring the
 Removal of an Individual
 From NRC Licensed or
 Regulated Activities and
 Order Directing Review of
 Personnel Security Files
 (Effective Immediately)

Docket Nos. EA 93-236
 IA 94-003

ASLBP Nos. 94-692-05-EA
 94-691-04-EA

ROBERT C. DAILEY

IA 94-003: Order Prohibiting
 Involvement in Certain NRC-
 Licensed or Regulated
 Activities (Effective
 Immediately)

August 18, 1994

MEMORANDUM AND ORDER
(Approving Settlement Agreement and Terminating Proceeding)

These proceedings involve two enforcement actions brought by the NRC Staff. The first would have directed Nuclear Support Services, Inc. (NSSI) to remove an individual from NRC-licensed or regulated activities for five years. The second would have prohibited that same individual from participating in NRC-licensed or regulated activities for the same period. Certain near-term corrective actions were also sought.

9404015

By Memorandum and Order (Consolidating Proceedings and Granting Extension of Time), dated May 4, 1994 (unpublished), we granted the requests for a hearing and consolidated the two proceedings. On June 27, 1994, we issued a Notice of Hearing and Prehearing Conference, 59 Fed. Reg. 34454 (July 5, 1994). Following a July 12, 1994 prehearing conference, we issued our First Prehearing Conference Order (Establishing Initial Discovery Schedules), dated July 15, 1994 (unpublished). In that Order, we noted that at the conference we had urged the parties seriously to consider settlement of these proceedings. (On June 21, 1994, prior to the conference NSSI/Dailey advised us that they had reached a settlement agreement with regard to the short-term relief sought by the Staff and were withdrawing their requests for a hearing with respect to those aspects of the Staff's NSSI enforcement order.)

On August 11, 1994, the parties filed a Joint Motion To Approve Settlement Agreement and Terminate Proceeding. A copy of the agreement was attached, and is appended to this Order. According to the Motion, NSSI and Mr. Dailey have entered a compromise because they desire to avoid the expense and hardship of litigation. The Staff believes that the settlement agreement is in the public interest.

We have carefully reviewed the compromise agreement and note that it provides a significant degree of the relief sought by the Staff. We agree with the parties that it is

consistent with the public interest and, consequently, we
grant the Joint Motion, approve the settlement agreement,
and, accordingly, terminate the proceeding.

IT IS SO ORDERED.

The Atomic Safety and
Licensing Board

Charles Bechhoefer
Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Richard F. Cole
Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Jerry R. Kline
Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Rockville, MD.
August 19, 1994

Attachment: Settlement Agreement

SETTLEMENT AGREEMENT

WHEREAS, on March 22, 1994 the Nuclear Regulatory Commission ("NRC") issued an order to Nuclear Support Services, Inc. ("NSSI") captioned "EA 93-236" (59 Fed. Reg. 14429 (March 28, 1994)) (hereafter "NSSI Order"), and issued an order to Robert C. Dailey captioned "IA 94-003" (59 Fed. Reg. 14688 (March 29, 1994)) (hereafter "Dailey Order"); and

WHEREAS, NSSI and Mr. Dailey have answered the NRC's orders and have requested a hearing on the orders, and NSSI and the NRC Staff later entered into a Settlement Agreement with regard to Part IV.B of the NSSI Order on June 21, 1994; and

WHEREAS, NSSI and Mr. Dailey have engaged in negotiation and compromise because they desire to avoid the expense and hardship of litigation; and

WHEREAS, the remaining issue before the NRC's Atomic Safety and Licensing Board ("Board"), whether the Dailey Order and Part IV.A of the NSSI Order should be sustained, need not be adjudicated because the NRC Staff, Mr. Dailey and NSSI have reached a compromise by which NSSI and Mr. Dailey have agreed to accept certain restrictions on Mr. Dailey's activities, as described below; and

WHEREAS, the NRC Staff believes that this Settlement Agreement is in the public interest;

NOW, THEREFORE, in consideration of the mutual promises made herein, NSSI, Mr. Dailey, and the NRC Staff agree as follows:

1. NSSI agrees to restrict Mr. Dailey from conducting security screening or fitness-for-duty activities (10 CFR Parts 26, 50, & 73) until March 22, 1996.
2. NSSI agrees that, if contacted by another person or company considering employing Mr. Dailey to conduct security screening or fitness-for-duty activities (10 CFR Parts 26, 50, & 73) prior to March 22, 1996, NSSI will advise that person of the existence of this Settlement Agreement and will provide them a copy of this Settlement Agreement.
3. Mr. Dailey agrees that he will not conduct security screening or fitness-for-duty activities (10 CFR Parts 26, 50, & 73) while employed by NSSI or any other person or company prior to March 22, 1996.

Page 1 of 3
August 10, 1994

4. Mr. Dailey agrees that, during the one year period from March 22, 1996 until March 22, 1997, he will provide notice to the Director, Office of Enforcement within thirty days after commencing employment with any organization other than NSSI, where his duties include responsibilities for conducting security screening or fitness-for-duty activities (10 CFR Parts 26, 50, & 73).

5. The NRC Staff hereby rescinds and vacates the Dailey Order and Part IV.A of the NSSI Order.

6. The NRC Staff agrees that Mr. Dailey's role as NSSI's Vice President Corporate Safety is consistent with this Settlement Agreement, in that his duties do not include responsibilities for conducting security screening or fitness-for-duty activities (10 CFR Parts 26, 50, & 73).

7. Nothing in this agreement shall be construed so as to restrict Mr. Dailey from being subject to security screening or fitness-for-duty requirements.

8. NSSI and Mr. Dailey and the NRC Staff 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 CFR § 2.203. If the Settlement Agreement is not approved or is changed in any substantive manner by the Board, it 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.

9. The parties understand and acknowledge that there has not been any adjudication of any wrongdoing by Mr. Dailey and that this Settlement Agreement is the result of a compromise and shall not for any purpose be construed: (a) as an admission by NSSI or Mr. Dailey of any wrongdoing or regulatory violation; (b) as an admission that the NRC has jurisdiction to issue orders to NSSI or Mr. Dailey; or (c) as a concession by the NRC Staff that no violation or wrongdoing occurred or that the NRC lacks jurisdiction to issue orders to NSSI or Mr. Dailey.

10. The parties agree that no inference adverse to either party shall be drawn based upon the parties having entered into this agreement.

IN WITNESS WHEREOF, Mr. Dailey, NSSI and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on this 10th day of August, 1994.

James Lieberman
James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20585

Robert C. Dailey
Robert C. Dailey
Vice President Corporate Safety
Nuclear Support Services, Inc.
West Market Street
Campbelltown, PA 17010

Joe C. Quick
Joe C. Quick
Chairman and President
Nuclear Support Services, Inc.
West Market Street
Campbelltown, PA 17010

Page 3 of 3
August 10, 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

May 4, 1993

IA 93-001

Mr. Richard J. Gardecki
(Address)

Dear Sir:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN CERTAIN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of
10 CFR 40.10 of the Commission's regulations as described in the
Order.

Failure to comply with the provisions of this Order may result in
civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James
Lieberman, Director, Office of Enforcement, who can be reached at
(301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice",
a copy of this letter and the enclosures will be placed in the
NRC's Public Document Room.

Sincerely,


Hugh L. Thompson Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations
Support

Enclosure: As stated

cc: Allied-Signal, Inc.
All Agreement States
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

IA 93-001

Richard J. Gardecki

)

)

ORDER PROHIBITING INVOLVEMENT IN CERTAIN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Richard J. Gardecki was recently employed by Allied-Signal, Inc., Metropolis, Illinois. Allied-Signal, Inc. (Licensee) holds License No. SUB-526 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 40. The license authorizes possession and conversion of uranium in accordance with the conditions specified therein. Mr. Gardecki was employed by the Licensee from about June 1991 through December 1992 in the position of Assistant Health Physicist, with responsibilities involving compliance with NRC requirements for radiation protection. Under the Licensee's organization and qualifications requirements, as specified in License Condition No. 9, an Assistant Health Physicist is required to hold a bachelor's degree. Failure to have a bachelor's degree holder in that position constitutes a violation of License Condition No. 9.

II

On October 5-7, 1992, an inspection was conducted at the Licensee's facility at Metropolis, Illinois, as a result of concerns raised within the NRC staff as to the education and experience of Richard J. Gardecki. As a result of information

developed in that inspection, an investigation was conducted in November and December 1992 by the Office of Investigations (OI). The inspection and investigation revealed that Mr. Gardecki intermittently took courses at the University of Delaware between 1962 and 1967 and in 1978, but did not accumulate sufficient credits to earn a bachelor's degree. While employed at the University of Delaware between 1977 and 1981, Mr. Gardecki prepared a transcript that falsely reflected sufficient hours of credit at that University to entitle him to a Bachelor of Science degree.

Mr. Gardecki subsequently used the false transcript to obtain employment at the University of Nebraska in about 1983, at Westinghouse Radiological Services Division in about 1985, at Environmental Testing Inc., in 1988, and at the Licensee in about June 1991. In each of these positions, Mr. Gardecki was involved in activities licensed by the NRC or an Agreement State, pursuant to an agreement with the NRC under section 274 of the Atomic Energy Act of 1954, as amended.

In addition, Mr. Gardecki obtained employment as a Radiation Specialist at the NRC in 1987 by submitting a Standard Form 171 (SF171), Application for Federal Employment, which contained the same false information regarding a bachelor's degree at the University of Delaware. He was allowed to resign his NRC employment following identification of the falsehood. Also,

during the OI investigation, he admitted that he had provided false information to the NRC regarding prior employment by General Dynamics in Denver, Colorado.

Further, in a transcribed sworn statement on December 1, 1992, Mr. Gardecki deliberately provided false information to OI investigators when he stated that he graduated from the University of Delaware in 1961. When asked about the University records indicating that he had not received a degree, Mr. Gardecki fabricated a story about the University having mixed his record with that of his brother. He also deliberately provided false information as to the accuracy of a University of Delaware transcript that he had submitted to the Licensee. In a transcribed, sworn statement to OI investigators on December 14, 1992, Mr. Gardecki admitted that he had provided false information in his sworn statements previously given to OI investigators on December 1, 1992 concerning his academic record and applications for employment.

III

Based on the above, Mr. Gardecki engaged in deliberate misconduct, which through his employment (from about June 1991 through December 1992) in a position with educational requirements that Mr. Gardecki did not meet, caused the Licensee to be in violation of the organization and qualifications

requirements of License Condition No. 9. This is a violation of 10 CFR 40.10. Mr. Gardecki also deliberately provided to NRC investigators information that he knew to be inaccurate and was in some respects material to the NRC which also constitutes a violation of 10 CFR 40.10. As an Assistant Health Physicist for the Licensee, Mr. Gardecki was responsible for performance of required surveys and keeping of required records, all of which provide evidence of compliance with Commission requirements. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Gardecki's deliberate actions in causing this Licensee to be in violation of License Condition No. 9, a violation of 10 CFR 40.10, and his violation of 10 CFR 40.10 caused by his deliberate misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or to an employer. Mr. Gardecki's misconduct (repeated on several occasions over several years with several employers) caused this Licensee to violate a Commission requirement; and his false statements to Commission officials demonstrate conduct that cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities in NRC jurisdiction can be conducted in

compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Gardecki were permitted at this time to be named as a Radiation Safety Officer (RSO) on an NRC license or permitted to supervise licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an Agreement State licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20. Therefore, the public health, safety and interest require that Mr. Gardecki be prohibited from being named on an NRC license as an RSO or from supervising licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an Agreement State licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for the same period, Mr. Gardecki is required to give notice of the existence of this Order to a prospective employer engaged in licensed activities, described below (Section IV, paragraph 2), to assure that such employer is aware of Mr. Gardecki's previous history. Mr. Gardecki is also required to notify the NRC of his employment by any person engaged in licensed activities, described below (Section IV, paragraph 2), so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the

public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 61, 81, 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 40.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Richard J. Gardecki is prohibited for five years from the date of this Order from being named on an NRC license as a Radiation Safety Officer or from supervising licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an agreement state licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20.
2. Should Richard J. Gardecki seek employment with any person engaged in licensed activities during the five year period from the date of this Order, Mr. Gardecki shall provide a copy of this Order to such person at the time Mr. Gardecki is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the

purposes of this paragraph licensed activities include licensed activities of 1) an NRC licensee, 2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and 3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

3. For a five year period from the date of this Order, Richard J. Gardecki shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer, involving licensed activities described in paragraph 2, above.

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

v

In accordance with 10 CFR 2.202, Richard J. Gardecki must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the

answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Richard J. Gardecki or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 799 Roosevelt Rd., Glen Ellyn, IL 60137, and to Richard J. Gardecki, if the answer or hearing request is by a person other than Richard J. Gardecki. If a person other than Richard J. Gardecki requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Richard J. Gardecki or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Richard J. Gardecki, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations Support

Dated at Rockville, Maryland
this 4th day of May 1993



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

MAR 14 1994

IA 94-002

Mr. William K. Headley
(Address Deleted)

Dear Sir:

SUBJECT: ORDER REQUIRING NOTICE TO CERTAIN EMPLOYERS AND PROSPECTIVE EMPLOYERS AND NOTIFICATION OF NRC OF CERTAIN EMPLOYMENT IN NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order. The Order requires that you: 1) inform NRC if, within two years from the date of this Order, you are involved or become involved in NRC-licensed activities at any employer other than Morgan County Memorial Hospital, and 2) provide a copy of the Order to any such employer or potential employer. Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Also as a result of your actions, a civil monetary penalty of \$9,750 was assessed against your employer. A copy of that enforcement action is also enclosed.

On September 16, 1991, the NRC revised its regulations to allow orders to be issued directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements, or who deliberately submits material false or incomplete information to the NRC or any licensee or its contractors. Similarly, an order may be issued to such an individual preventing him or her from engaging in licensed activities at any NRC-licensed facility. A copy of this rulemaking is enclosed.

Similar conduct by you in the future could result in more significant enforcement action against you as an individual, including an Order preventing you from engaging in licensed activities at all NRC facilities. Violation of 10 CFR 30.10 may also lead to criminal prosecution.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

Mr. William K. Headley

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosures: As Stated

cc: Morgan County Memorial Hospital

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

WILLIAM K. HEADLEY

) IA 94-002
)

ORDER REQUIRING NOTICE TO CERTAIN EMPLOYERS
AND PROSPECTIVE EMPLOYERS AND NOTIFICATION OF NRC OF
CERTAIN EMPLOYMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

William K. Headley is currently involved in NRC-licensed activities as an employee at Morgan County Memorial Hospital, Martinsville, Indiana. Morgan County Memorial Hospital (the licensee) is the holder of Byproduct Material License No. 13-17449-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of byproduct material for medical use as described in 10 CFR 35.100, 35.200 and 35.300.

II

On September 28, 1993, the NRC conducted an inspection at the licensee's facility. During the inspection, the NRC identified irregularities in the licensee's records of routine daily area radiation and weekly area radiation and contamination surveys conducted by Mr. Headley. During discussions with the NRC inspector, Mr. Headley admitted to deliberately falsifying the survey records and to deliberately failing to perform the required daily, and some of the required weekly, surveys for the past two and one half years. On October 26, 1993 the NRC

conducted an enforcement conference in the Region III Office with the licensee and Mr. Headley. During the enforcement conference, Mr. Headley reaffirmed his statements regarding his deliberate failure to perform required surveys and his deliberate falsification of survey records to make it appear that they had been performed when, in fact, they had not. Mr. Headley stated that one of the reasons for his actions was his full workload and his perceived need to save time by not doing some activities that he considered of minimal safety significance.

III

As discussed above, Mr. Headley deliberately failed to conduct surveys required by 10 CFR 35.70 and, in violation of 10 CFR 30.9, deliberately created survey records required to be maintained by licensees pursuant to 10 CFR 35.70 and which he knew to be false. Further, in violation of 10 CFR 30.10, Mr. Headley, an employee of the licensee, has engaged in deliberate misconduct that has caused the licensee to be in violation of 10 CFR 35.70 and 10 CFR 30.9.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to maintain records that are complete and accurate in all material respects. Mr. Headley's actions have raised serious doubt as to

whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

The licensee has counseled Mr. Headley that further failures on his part will result in the licensee's removal of him from licensed activities and may result in his termination by the licensee. The licensee has also issued a letter of reprimand to Mr. Headley. Further, the licensee has instituted procedures to ensure that each survey is observed by the Department Head or designee.

Given the deliberate nature of Mr. Headley's conduct over an extensive period of time, I lack 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. Headley were permitted at this time to become involved in licensed activities, other than those licensed activities performed at Morgan County Memorial Hospital, without providing specific notice to the NRC and the employing licensee as described above. Therefore, the public health, safety, and interest require that Mr. Headley be required to: 1) provide a copy of this Order to any employer or prospective employer, other than Morgan County Community Hospital, engaged in licensed activities to assure that such employer is aware of Mr. Headley's previous history, and 2) notify the NRC of any involvement in licensed activities,

other than those conducted at Morgan County Memorial Hospital, to assure that the NRC can continue to monitor the status of Mr. Headley's compliance with the Commission's requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 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 30.10, IT IS HEREBY ORDERED, EFFECTIVELY IMMEDIATELY, THAT:

1. Should William K. Headley seek employment involving NRC-licensed activities during the two year period from the date of this Order, Mr. Headley shall provide a copy of this Order to the prospective employer at the time that Mr. Headley is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision.
2. For a two year period from the date of this Order, William K. Headley shall, within 10 business days of his acceptance of an employment offer involving NRC-licensed

activities, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer.

3. If William K. Headley is currently involved in NRC-licensed activities at any employer other than Morgan County Community Hospital, Mr. Headley shall, within 30 days of the date of this Order, provide a copy of this Order to any such employer and provide notice to the Director, Office of Enforcement, at the address in 2. above, of the name, address, and telephone number of any such employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstrations by Mr. Headley of good cause.

In accordance with 10 CFR 2.202, William K. Headley must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this

Order and shall set forth the matters of fact and law on which William K. Headley or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to William K. Headley if the answer or hearing request is by a person other than William K. Headley. If a person other than William K. Headley requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by William K. Headley or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), William K. Headley, or any other person adversely affected by this Order, may, in addition

to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 4th day of March 1994



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

IA 95-028

August 3, 1995

Maria Hollingsworth
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC (EFFECTIVE IMMEDIATELY)
(OI REPORT NO. 4-95-001)

Dear Ms. Hollingsworth:

This is in reference to NRC investigation 4-95-001 and to the enforcement conference that was conducted by telephone with you on June 5, 1995. A list of enforcement conference participants is enclosed. For the reasons described in the enclosed Order, the NRC has determined that you should be prohibited from any involvement in NRC-licensed activities for a period of one year. The Order also requires that you provide notification to NRC of your involvement in NRC-licensed activities for a period of one year following the one year prohibition period.

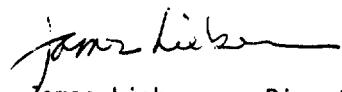
You will receive a separate communication from NRC regarding the disposition of your December 4, 1994, application for a license.

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.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room (PDR).

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-31252
License No. 35-26996-01

Enclosures: As Stated
cc w/Enclosures: State of Oklahoma

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

MARIA HOLLINGSWORTH
Tulsa, Oklahoma

)
)
)

Docket No. 030-31252
License No. 35-26996-01
IA 95-028

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC
(EFFECTIVE IMMEDIATELY)

I

Maria Hollingsworth is the owner and operator of Blackhawk Engineering, Inc. (Licensee or Blackhawk) and served as the radiation safety officer with respect to its Nuclear Regulatory Commission (NRC or Commission) license. Blackhawk was issued Byproduct Materials License No. 35-26996-01 by the NRC, pursuant to 10 CFR Part 30, on August 22, 1989. The license authorized Blackhawk to possess and utilize sealed sources of radioactive material contained in moisture/density gauges in accordance with the conditions specified therein. The license expired on August 31, 1994, and Blackhawk did not submit a renewal application as provided in 10 CFR 30.37. On February 14, 1995, the NRC issued an order requiring Blackhawk to cease use of, and transfer, all NRC-licensed material in its possession to a person authorized to receive and possess such material (EA 95-018). Blackhawk complied with the terms of the order and on May 17, 1995, the NRC issued a Notice of Termination of Blackhawk's NRC license.

II

The February 14, 1995 order was issued to Blackhawk because: (1) Blackhawk continued to utilize gauges containing NRC-licensed material after the NRC

license had expired, and Ms. Hollingsworth had specifically agreed not to utilize this material, as confirmed by a Confirmatory Action Letter (CAL) from the NRC to Blackhawk on November 8, 1994; and (2) Ms. Hollingsworth was not truthful in statements made to NRC personnel regarding the continued use of the gauges. Ms. Hollingsworth's actions were in violation of 10 CFR 30.10, a regulation prohibiting deliberate misconduct by any licensee or employee of a licensee. Deliberate misconduct includes an intentional act or omission that a person knows would cause a licensee to be in violation of NRC requirements, or deliberate submission to the NRC of material information that the person submitting the information knows to be incomplete or inaccurate. In brief, Ms. Hollingsworth violated 10 CFR 30.10 because, as she admitted to NRC investigators: (1) she understood in November 1994 that she no longer was authorized to use the gauges but did use the gauges until December 22, 1994, to complete a construction job; and (2) she deliberately provided false information when she told an NRC inspector on December 19, 1994 that she had not used the gauges since 1992.

On June 5, 1995, the NRC conducted a telephonic enforcement conference with Ms. Hollingsworth to determine whether her deliberate misconduct warranted enforcement action directly against her as an individual. Ms. Hollingsworth stated that prior to November 1994, she had responded to NRC inquiries regarding the renewal of Blackhawk's license and believed that she had taken care of it. However, she admitted that, after being contacted by the regional office in November 1994 and receiving a November 8, 1994 Confirmatory Action Letter (CAL) from NRC, she made a conscious decision to continue using the gauges, contrary to the terms of the CAL, to complete a construction job. Ms.

Hollingsworth also stated that she did so without contacting the NRC for further guidance or assistance because she believed that NRC would not have allowed her to continue using licensed material. Ms. Hollingsworth stated that she would comply with all NRC regulations in the future.

III

Ms. Hollingsworth admits both to deliberately violating NRC requirements by using NRC-licensed material after being made aware of the expiration of Blackhawk's license, and to deliberately making a false statement to an NRC inspector. Given Ms. Hollingsworth's position as owner and operator of Blackhawk and her role as the radiation safety officer with respect to the NRC license, the NRC considers her deliberate misconduct particularly significant. NRC must be able to rely on licensee management to comply with NRC requirements, especially the requirement to provide accurate information to the NRC. Despite her commitment to comply with NRC requirements in the future, Ms. Hollingsworth's past deliberate misrepresentation to the NRC and deliberate violation of other NRC requirements raise serious doubt as to whether she can be relied upon to comply with NRC requirements in the future, including the requirement to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities would be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Ms. Hollingsworth were permitted at this time to be involved in NRC-licensed

activities. Therefore, the public health, safety and interest require that Ms. Hollingsworth be prohibited from any involvement in NRC-licensed activities for a period of one year. Additionally, Ms. Hollingsworth is required to notify the NRC of her involvement in NRC-licensed activities for one year following the one year prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Maria Hollingsworth's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Maria Hollingsworth is prohibited from engaging in NRC-licensed activities for a period of one year from the date of this Order. 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. For a period of one year after the one year period of prohibition has expired, Maria Hollingsworth shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities, or her 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in NRC-licensed activities. In the first notification, Ms. Hollingsworth shall include a statement of her commitment to compliance with NRC requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Hollingsworth of good cause.

V

In accordance with 10 CFR 2.202, Maria Hollingsworth must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. 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, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Hollingsworth or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a

hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; and to Ms. Hollingsworth if the answer or hearing request is by a person other than Ms. Hollingsworth. If a person other than Ms. Hollingsworth requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Hollingsworth or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Maria Hollingsworth, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 3rd day of August 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

June 12, 1995

EA 94-240
IA 95-015
IA 95-016

Midwest Testing, Inc.
ATTN: Mr. William Kimbley, President
Ms. Joan Kimbley, General Manager and
Treasurer
2421 Production Drive
Indianapolis, Indiana 46241

SUBJECT: CONFIRMATORY ORDER AND NOTICE OF TERMINATION OF LICENSE
(OI INVESTIGATION REPORT NO. 3-93-022R)

Dear Mr. and Ms. Kimbley:

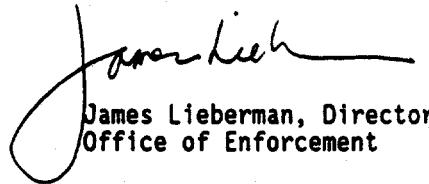
The Confirmatory Order (Order) to which you agreed on June 2, 1995, has been executed. A signed copy of the Order is enclosed. In addition, your license has been terminated as of the date of this letter in accordance with the Order Suspending License dated August 26, 1994. Enclosed is a copy of Amendment 1 terminating License No. 030-24866-02. We consider this matter settled.

Under the terms of this Order, for a period of five years beginning June 2, 1995, you, as well as Midwest Testing, Inc. and any successor entity, are prohibited from applying to the NRC for a license, and prohibited from engaging in, or controlling, any NRC-licensed activity. Should you violate the terms of the Order, you may be subject to civil and criminal sanctions under Sections 233 and 234 of the Atomic Energy Act of 1954, as amended.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,



James Lieberman
Office of Enforcement

Enclosures: As Stated

Docket No. 030-32827
License No. 13-24866-02

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
MIDWEST TESTING, INC.) Docket No. 030-32827
Indianapolis, Indiana) License No. 13-24866-02
EA 94-240
MR. WILLIAM G. KIMBLEY) IA 95-015
MS. JOAN KIMBLEY) IA 95-016

CONFIRMATORY ORDER

I

Midwest Testing, Inc. (Licensee) is holder of NRC License No. 13-24866-02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the Licensee to possess and use cesium-137 and americium-241 as sealed sources in moisture/density gauges. The License was issued on August 19, 1992, and is being terminated by Amendment No. 1, which is being issued on the date of this Order.

II

On July 27, 1993, a routine inspection of licensed activities was conducted at Midwest Testing, Inc. (Licensee) by NRC Region III. During the inspection the inspector identified that licensee management had allowed workers to operate moisture density gauges without personnel monitoring devices (film badges) and that required leak tests of the gauges had not been performed.

The NRC Office of Investigations (OI) conducted an investigation to determine whether willful violations of NRC requirements had occurred. Based on the NRC inspection and OI investigation, it appears that Mr. William G. Kimbley, owner

of Midwest Testing, deliberately violated NRC requirements by:

- (1) allowing operators to use moisture density gauges without personnel monitoring devices between December 24, 1991, and August 25, 1993, in violation of Condition 18.A of License No. 13-24866-01 (expired on March 31, 1992) and Condition 20.A of License No. 13-24866-02 (issued on August 19, 1992);
- (2) not performing leak tests of two moisture density gauges between August 19, 1992, and July 31, 1993, in violation of Condition 13.A of License No. 13-24866-02;
- (3) not requesting a license amendment to name a new Radiation Protection Officer, in violation of Condition 11 of License No. 13-24866-02, when the individual named on the license left Midwest Testing in October 1993;
- (4) storing licensed material at an unauthorized location since March 1994 in violation of Condition 10 of License No. 13-24866-02 and 10 CFR 30.34(c); and
- (5) allowing moisture density gauges to be used between April 1, 1992, and August 19, 1992, with an expired license in violation of 10 CFR 30.3 and 10 CFR 30.36(c)(1)(i) and (iii).

In addition, it appears that Ms. Joan Kimbley, General Manager and Treasurer of Midwest Testing, Inc., deliberately violated Items (1), (2), and (5) above. These actions appear to have been a result of Midwest Testing, Inc. financial constraints, inexperience of the General Manager and, in general, a lack of appreciation on the part of the Owner and the General Manager of the regulatory significance and consequences of the violations.

A Confirmatory Action Letter was issued to the Licensee on March 21, 1994, confirming that the Licensee would secure its moisture density gauges in locked storage until the Licensee: (1) designated a Radiation Protection Officer, (2) obtained NRC approval via a license amendment for its designated Radiation Protection Officer and its current moisture density gauge storage location, (3) demonstrated that all its moisture density gauges were appropriately tested for leakage, and (4) demonstrated that personnel radiation monitoring devices were provided for those persons designated to use moisture density gauges. The Licensee did not use its moisture density gauges after issuance of the Confirmatory Action Letter.

Subsequently, an Order Suspending License (Effective Immediately) was issued to the Licensee on August 26, 1994, for nonpayment of fees, which required: (1) the Licensee to suspend NRC licensed activities and dispose of its licensed material; and (2) NRC termination of License No. 13-24866-02 following disposal of the licensed material. The Licensee disposed of its licensed material in December 1994. NRC Region III verified that the licensed material was properly transferred to authorized recipients.

III

A transcribed enforcement conference was conducted between the NRC and the Licensee on March 15, 1995, to discuss the apparent violations, their causes and safety significance. Mr. Kimbley stated during the enforcement conference, "And the question about would we ever pursue an NRC license again, the answer to that is no. If there is any way I can give you assurance of that, I'll be glad to do that." Ms. Kimbley stated during the Enforcement Conference, "Like we stated earlier, we don't intend to continue with any licensed material in the future."

Further, in a telephone conversation on May 2, 1995, with Mr. Paul Pelke, NRC Region III, Mr. and Ms. Kimbley agreed to the provisions and to the issuance of this Order to resolve all matters pending between them. Specifically, Mr. Kimbley agreed, for a period of five years from the date he signs this Confirmatory Order, that Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time. Ms. Kimbley agreed, for a period of five years from the date she signs this Confirmatory Order, that Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity,

as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

I find that the Licensee's commitments as stated in the May 2, 1995 conversation with Paul Pelke, NRC Region III, are acceptable and necessary and 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 the Licensee's commitments be confirmed by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 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 that:

1. For a period of five years from the date Mr. William G. Kimbley signs this Confirmatory Order, Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

2. For a period of five years from the date Ms. Joan Kimbley signs this Confirmatory Order, Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.
3. Mr. Kimbley, Ms. Kimbley, Midwest Testing, Inc., or any successor entity, as described above, waive the right to contest this Order in any manner, including requesting a hearing on this Order.

The Regional Administrator, NRC Region III, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee, Mr. William G. Kimbley, or Ms. Joan Kimbley of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, Mr. William G. Kimbley, and Ms. Joan Kimbley may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and

Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to the Licensee. If such a person 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 2.714(d).

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, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

This Order was consented to:

FOR THE LICENSEE, WILLIAM G. KIMBLY, AND JOAN KIMBLY

BY: Butch E. Kimbley Notary Public
William G. Kimbley
Dated: 6/02/95

Notary: Butch E. Kimbley
Residence: Hendricks County, Indiana
Expiry: 6-19-98

BY: Joan Kimbley Notary Public
Joan Kimbley
Dated: 6-2-95

Notary: Butch E. Kimbley
Residence: Hendricks County, Indiana
Expiry: 6-19-98

FOR THE NUCLEAR REGULATORY COMMISSION

BY: James Lieberman
James Lieberman

Order Dated: June 12, 1995
Rockville, Maryland



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

AUG 26 1994

IA 94-019

Mr. Larry S. Ladner
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

Based on an investigation conducted by the NRC's Office of Investigation, the NRC Staff has determined that you deliberately failed to supervise radiographers' assistants performing licensed activities, falsified a large number of quarterly personnel audits and provided false information to NRC officials. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Larry S. Ladner

) IA 94-019
)
)
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Larry S. Ladner has been employed as a radiographer in the field of industrial radiography since approximately 1964. In October, 1989, Mr. Ladner was hired by the American Inspection Company, Inc. (AMSPEC). AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with certain specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. Ladner worked as both a radiographer and a supervisor until his dismissal by AMSPEC in the latter part of 1991.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations (OI) conducted an investigation of licensed activities of AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. Ladner, in his position as a supervisor (1) deliberately allowed radiographers' assistants to work

unsupervised on numerous occasions, (2) deliberately falsified in excess of 100 quarterly personnel audits, and (3) deliberately gave false information to NRC officials regarding the unauthorized use of licensed material.

10 CFR 34.44 requires that a radiographer's assistant shall be under the personal supervision of a radiographer whenever he uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the operations referred to in this section. In addition, 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that requires the observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months.

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

While functioning as a radiation protection officer, Mr. Ladner deliberately caused a violation of 10 CFR 34.44 in December 1990 and February through May 1991 by allowing three radiographers' assistants to work independently and without personal supervision. During this same period, Mr. Ladner also

authorized others to use his name on check-out logs, in violation of 10 CFR 30.10. Moreover, Mr. Ladner's employer (AMSPEC) had an approved program that required the observation of radiographers and radiographers' assistants at the required interval as prescribed by 10 CFR 34.11(d); however, between September 1990 and November 1991, he deliberately disregarded the licensee's program in excess of 100 times by falsifying records of audits that were never performed, causing a violation of 10 CFR 30.9. During an NRC inspection conducted on July 22-23, 1991, Mr. Ladner deliberately provided inaccurate information to NRC inspectors when he claimed no knowledge of a reported unauthorized use of licensed material, when in fact he was aware of such use.

On January 15, 1993, Mr. Ladner pled guilty to one felony count involving deliberate violations of the Atomic Energy Act based on his violations of these requirements.

III

Based on the above, Mr. Ladner engaged in deliberate misconduct which caused AMSPEC to be in violation of 10 CFR 30.9 and 34.11(d). The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to supervise radiographer's assistants performing licensed activities and to maintain and compile records that are complete and accurate in all material respects. Mr. Ladner's deliberate actions in causing AMSPEC to be in violation of NRC requirements (e.g. 30.9 and 34.11(d)), and his deliberate submittal to AMSPEC of false audit records, which are violations of 10 CFR 30.10, have raised serious doubt as to whether he can be relied on to comply with NRC requirements and to provide complete and accurate

information to the NRC. Mr. Ladner's deliberate misconduct, including his deliberate false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack 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. Ladner were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Ladner be prohibited from engaging in NRC licensed activities (including supervising, training and auditing) for either an NRC licensee or an Agreement State licensee in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of three years from the date of this Order. In addition, for a period of two years commencing after completion of the three year period of prohibition, Mr. Ladner is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Ladner's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Larry S. Ladner is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which 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. During this time period, Mr. Ladner must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.
2. For a period of two years after the three-year period of prohibition has expired, Larry S. Ladner shall within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Ladner shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Larry S. Ladner must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Larry S. Ladner or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Larry S. Ladner if the answer or hearing request is by a person other than Larry S. Ladner. If a person other than Larry S. Ladner requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Larry S. Ladner or another 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Larry S. Ladner, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman
James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



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

AUG 26 1994

IA 94-017

Daniel J. McCool
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

Based on an investigation conducted by the Nuclear Regulatory Commission's Office of Investigation, the NRC Staff has determined that you deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition, you deliberately failed to train and certify employees in radiation safety as required by the AMSPEC license conditions. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) IA 94-017
Daniel J. McCool)
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Daniel J. McCool has been employed as a radiographer in the field of industrial radiography since approximately 1968. On approximately January 1, 1987, Mr. McCool initiated licensed activities at the American Inspection Company, Inc., (AMSPEC), in his capacity as President. AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. McCool was President of AMSPEC at the time of license suspension.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. McCool, in his capacity as President of AMSPEC, conspired with other AMSPEC officials to deceive the Commission

regarding training of employees and, in addition, deliberately provided false sworn testimony to NRC officials.

AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual refers to employee training to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. In addition, 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or limitation of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

From 1990 through April 1992, Mr. McCool deliberately violated License Condition 17 by failing to train new Radiation Protection Officers (RPOs), and by allowing others to administer the RPO qualification process, including exams and certification, although this was contrary to the Radiation Safety Program established in the Radiation Safety Manual. For over two years, from late fall 1989 through April 1992, Mr. McCool failed to perform the radiation safety audit function required by the Radiation Safety Program. In addition to the above, Mr. McCool deliberately provided false information under oath to

an investigator and an inspector on May 4, 1992, regarding training of an individual in order to qualify that individual for work as an RPO.

On September 22, 1993, Mr. McCool pled guilty to two felony violations of the Atomic Energy Act based on his violations of these requirements. The violations to which Mr. McCool pled were: (1) conspiracy to violate the Atomic Energy Act, and (2) providing false information to the NRC.

III

Based on the above, Mr. McCool engaged in deliberate misconduct which caused the licensee to be in violation of the training requirements of License Condition 17 and 10 CFR 30.9. The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. McCool's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate false statements to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, including the requirement to provide complete and accurate information to the NRC. Mr. McCool's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack 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. McCool were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. McCool be prohibited from engaging in NRC-licensed activities (including any supervising, training or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for a period of five years commencing after completion of the five year period of prohibition, Mr. McCool is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. McCool's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Daniel J. McCool is prohibited for five years from the date of this Order from 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. During this time period, Mr. McCool must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Daniel J. McCool shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. McCool shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Daniel J. McCool must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Daniel J. McCool or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Daniel J. McCool if the answer or hearing request is by a person other than Daniel J. McCool. If a person other than Daniel J. McCool requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

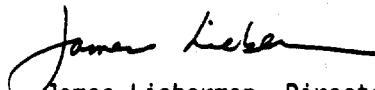
If a hearing is requested by Daniel J. McCool or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Daniel J. McCool or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order,

including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

JUN 28 1994

Docket No. 55-60117
License No. SOP-11160
IA 94-014 and EA 94-094

Mr. Stephen Mignotte
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

Dear Mr. Mignotte:

**SUBJECT: NOTICE OF VIOLATION AND ORDER PROHIBITING INVOLVEMENT IN
10 CFR PART 55 LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)**

The Nuclear Regulatory Commission (NRC) has received a letter dated December 23, 1993 from the New York Power Authority, informing us that it no longer has a need to maintain your operating license for the Indian Point Unit 3 Nuclear Power Plant. We also received a letter dated January 3, 1994 (the letter is actually dated January 3, 1993, but due to the content of the letter, it is apparent that the correct date is January 3, 1994) from the New York Power Authority containing information concerning the circumstances associated with your confirmed positive test for marijuana and cocaine during a random drug test conducted at the facility on November 23, 1993. The test was conducted in accordance with fitness-for-duty requirements. We plan to place both of these letters in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility licensee that you no longer need to maintain a license has caused your license SOP-11160 to expire as of December 23, 1993. A Notice of Violation is being issued to you for your failure of the chemical test, your performance of licensed duties while under the influence of illegal drugs, and your submission of inaccurate information in the form of a false urine sample.

The purpose of the Commission's Fitness-for-Duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter that undermines the special trust and confidence placed in you as a licensed operator. The violations relating to the chemical test failure were categorized as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions", 10 CFR Part 2, Appendix C (Policy) because the use of illegal drugs by licensed operators is a significant regulatory concern.

The violation relating to the submission of a false urine sample is of significant concern to the NRC because it indicates a willingness on your part to subvert the purpose of the facility licensee's fitness-for-duty program by deliberate violation of 10 CFR 55.53(k) and by deliberately providing

inaccurate and incomplete information to the licensee in violation of 10 CFR 50.5(a)(1) and (2). This violation was also categorized as a Severity Level III violation in accordance with the Policy.

Because your license has expired, you are not required to respond to the Notice of Violation at this time unless you contest the violations. Should you contest the violations, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region I, U. S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406.

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator, in accordance with 10 CFR Part 55. Although you resigned your position at Indian Point 3 on November 23, 1993, the NRC remains concerned about the circumstances surrounding your urine test. The temperature of the first urine sample you provided was below the limits to be expected from a fresh urine sample and that sample yielded a negative test result. Due to the temperature of the sample, however, you were required to supply another sample, which was witnessed to ensure that it was a genuine sample, and this sample yielded a positive test result. The temperature of the first sample and the different results of the two samples taken close in time indicate that the first sample was not genuine and is evidence that you supplied a surrogate sample in an attempt to avoid detection for the use of illegal drugs. This attempt to subvert the testing process is a violation of 10 CFR 55.53(k), as well as 10 CFR 50.5(a)(1) and (a)(2), and demonstrates an intentional disregard for the important obligations of a licensed operator. In addition, the positive test result constitutes a violation of the conditions of your license prohibiting any use of illegal drugs, by the terms of 10 CFR 55.53(j). Therefore, an Order is also being issued prohibiting your involvement in 10 CFR Part 55 licensed activities for a period of three years from the date of the Order.

Failure to comply with the provisions of the enclosed Order may result in civil or criminal sanctions. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

If, after the time period specified in the Order, you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violations and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all fitness-for-duty and other license requirements and conditions.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter with its enclosures but

Mr. Stephen Mignotte

3

with your address removed will be placed in the PDR. The letters from New York Power Authority, dated December 23, 1993 and January 3, 1994, will not be placed in the PDR.

Sincerely,

James L. Milhoan
James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations, and Research

Enclosures:

1. Order Prohibiting Involvement
in 10 CFR Part 55 Licensed Activities
(Effective Immediately)
2. Notice of Violation
3. December 23, 1993 letter from NYPA
4. January 3, 1994 letter from NYPA

cc w/encl:
Resident Manager, IP-3

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

STEPHEN MIGNOTTE

Senior Reactor Operator

)
)
)

Docket No. 55-60117
License No. SOP-11160
IA 94-014

ORDER PROHIBITING INVOLVEMENT
IN 10 CFR PART 55 LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Stephen Mignotte (Mr. Mignotte) held Senior Reactor Operator License No. SOP-11160 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 55. The license authorized Mr. Mignotte to manipulate, and to supervise the manipulation of, the controls of the nuclear power reactor at the New York Power Authority's (Facility Licensee) Indian Point 3 Nuclear Power Plant in Buchanan, New York. On November 23, 1993, Mr. Mignotte resigned his employment with the New York Power Authority, which caused the License to expire. Additionally, the Facility Licensee, in a letter dated December 23, 1993, informed the NRC that the New York Power Authority no longer had a need to maintain Mr. Mignotte's operating license for the Indian Point Unit 3 Nuclear Power Plant.

II

The responsibilities associated with a Senior Reactor Operator license issued pursuant to 10 CFR Part 55 require that individuals be fit for duty while performing safety-related activities at the facility. The character of the individual, which includes the individual's trustworthiness, is a

consideration in issuing an operator license. See Section 182a of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2232a). In determining whether or not an individual seeking a license to be a reactor operator or senior reactor operator has the necessary character and trustworthiness, the Commission takes into account any history of illegal drug use by the applicant. Prior to May 26, 1987, each applicant for a reactor operator or senior reactor operator license was required to certify that the applicant had no drug or narcotic habit on the Certificate of Medical Examination, NRC Form 396. Since that time, the NRC has required an evaluation of the applicant prepared by a physician as part of a license application. See 10 CFR 55.23(a). This evaluation is presented on a Certificate of Medical Examination, NRC Form 396. See 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as use of illegal drugs or abuse of alcohol. See Form 396; see also ANSI/ANS 3.4-1983, Section 5.2.2.

In accordance with 10 CFR Part 26, the Facility Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities. In addition, licensed operators are required by 10 CFR 55.53(j) to refrain from use of illegal drugs, including marijuana and cocaine. Licensed operators are also required by 10 CFR 55.53(k) to participate in 10 CFR Part 26 fitness-for-duty programs established by the Facility Licensees.

III

On November 23, 1993, Mr. Mignotte, while on duty as a Senior Reactor Operator at the Indian Point 3 facility, was requested by the Facility Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Facility Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Mignotte, the nurse checked the temperature of the sample, noticed that it felt "cool to the touch", and found that the temperature was below specifications in 10 CFR Part 26, Appendix A, Section 2.4(g)(14), for acceptable urine samples. As a result, Mr. Mignotte was requested to provide a witnessed urine sample to the Facility Licensee in accordance with the same section of the Appendix. Mr. Mignotte provided a second sample which was subsequently determined, on November 30, 1993, to contain both marijuana and cocaine above cutoff levels specified by the Appendix. After the witnessed urine sample had been collected on November 23, 1993, Mr. Mignotte was suspended from licensed duties and he subsequently resigned that same day. These facts were provided to the NRC by the Facility Licensee, in letters dated December 23, 1993 and January 3, 1994, and were discussed in the report of an NRC inspection conducted January 12-13, 1994.

The results of the second, witnessed urine sample indicate that Mr. Mignotte used illegal drugs, which is a violation of the conditions of his license imposed by 10 CFR 55.53(j). Furthermore, his performance of licensed duties while under the influence of illegal drugs is also a violation of the conditions of his license imposed by 10 CFR 55.53(j). Based on the

temperature of the first urine sample provided by Mr. Mignotte and the fact that the first sample yielded negative results when tested for illegal substances while the subsequent, witnessed sample yielded positive results, I conclude that the first sample was a surrogate false sample, submitted by Mr. Mignotte in an attempt to conceal illegal drug use.

10 CFR 50.5(a)(2) prohibits any employee of a licensee from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The urine samples collected within the context of a licensee's chemical testing program pursuant to the requirements of 10 CFR Part 26 represent information material to an access authorization and fitness-for-duty decision. Therefore, Mr. Mignotte's deliberately submitting inaccurate information material to the NRC in the form of a false sample, is a violation of 10 CFR 50.5(a)(2). In addition, Mr. Mignotte violated 10 CFR 50.5(a)(1) by deliberately providing to the Facility Licensee a surrogate urine sample that he knew to be inaccurate at the time he submitted it and which, but for detection, would have caused the Facility Licensee to be in violation of 10 CFR 50.9(a).

Mr. Mignotte's failure to comply with the prohibition against illegal drug use and his attempts to circumvent the chemical testing program to avoid detection of illegal drug use while employed by the Facility Licensee are violations of the conditions of Mr. Mignotte's license imposed by 10 CFR 55.53(j) and (k), and demonstrate an intentional disregard for the important obligations of a licensed operator.

Based on the above, Mr. Mignotte, an employee of the New York Power Authority at the time of the incident, engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(1) and (2) by deliberately violating 10 CFR 55.53(k), in that he submitted to the facility licensee information which he knew to be inaccurate in some respect material to the NRC. Mr. Mignotte, a licensed Senior Reactor Operator at the time of the event, also used illegal substances and performed licensed duties while under the influence of illegal substances in violation of 10 CFR 55.53(j), and deliberately failed to participate in the fitness-for-duty program established by the facility licensee in violation of 10 CFR 55.53(k).

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mignotte's actions in using illegal drugs and attempting to circumvent fitness-for-duty requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed individuals and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Mignotte will conduct any 10 CFR Part 55 licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be

protected with Mr. Mignotte engaged in such licensed activities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Mignotte be prohibited from involvement in 10 CFR Part 55 licensed activities for three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 107, 161b, 1611, 1610, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 55.61, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Mignotte is prohibited for three years from the date of this Order from engaging in licensed operator activities licensed by the NRC pursuant to 10 CFR Part 55.
- B. For a period of three years from the date of this Order, Mr. Mignotte shall provide a copy of this Order to any prospective employer engaged in activities licensed by the NRC pursuant to 10 CFR Part 50 prior to his acceptance of employment with such prospective employer so that the employer will have notice of the prohibition against Mr. Mignotte's involvement in licensed operator activities licensed pursuant to 10 CFR Part 55.

C. For three years from the date of this Order, Mr. Mignotte shall provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer, from an employer who is engaged in activities licensed by the NRC pursuant to 10 CFR Part 50.

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

VI

In accordance with 10 CFR 2.202, Mr. Mignotte must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mignotte or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address; to the Regional Administrator, Region I, U. S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406; and to Mr. Mignotte, if the answer or hearing request is by a person other than Mr. Mignotte. If a person other than Mr. Mignotte 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 2.714(d).

If a hearing is requested by Mr. Mignotte or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mignotte or any person adversely affected by this Order, may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without

further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James L. Milhoan
James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 28th day of June 1994

NOTICE OF VIOLATION

Stephen Mignotte
Senior Reactor Operator

Docket No. 55-60117
License No. SOP-11160
EA 94-094

In letters from the New York Power Authority dated December 23, 1993 and January 3, 1994, and during an inspection conducted by the NRC on January 12-13, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

A. 10 CFR 55.53(j) prohibits the use of illegal drugs, including marijuana and cocaine, and prohibits the operator from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of marijuana or cocaine. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the operator "exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee."

10 CFR 55.53(k) requires each licensee at power reactors to participate in the drug and alcohol testing programs established pursuant to 10 CFR Part 26.

1. Contrary to the above, the licensee violated 10 CFR 55.53(j) as evidenced by the following examples:
 - a. the licensee used marijuana and cocaine, as evidenced by a confirmed positive test for these drugs from a urine sample submitted on November 23, 1993; and
 - b. the licensee performed licensed duties on November 23, 1993 immediately before the submission of the urine sample which indicated that the licensee was under the influence of marijuana and cocaine while performing those duties. (01013)
2. Contrary to the above, the licensee violated 10 CFR 55.53(k) in that when he was selected for a random test on November 23, 1993, he submitted a surrogate urine sample for testing. The low temperature of this first sample and the fact that it tested negative while an observed sample submitted soon afterward tested positive for drugs is evidence that the first sample was a surrogate. (01023)

This is a Severity Level III problem (Supplement I).

B. 10 CFR 50.9(a) requires that information required by license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

10 CFR 50.5(a)(1) prohibits an employee of a licensee from engaging in deliberate misconduct that, but for detection, would have caused the licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license.

10 CFR 50.5(a)(2) prohibits any employee of a licensee from submitting to a licensee information that the employee submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, in violation of 10 CFR 50.5(a)(1), Stephen Mignotte deliberately provided a surrogate urine sample to New York Power Authority, a Commission licensee, as described in Violation A, above, which, if New York Power Authority had not detected that the sample was a surrogate sample, would have caused the licensee to be in violation of 10 CFR 50.9(a). In addition, Mr. Mignotte's action violated 10 CFR 50.5(a)(2) because the information to be derived from that urine sample was material to the NRC in that it was required by 10 CFR Part 26. (02013)

This is a Severity Level III violation (Supplement VII).

Because your license has expired, you are not required to respond to this Notice of Violation at this time unless you contest the violation. Should you contest the Notice of Violation, a response is required within 30 days of the date of this Notice addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415.

Dated in Rockville, Maryland
this 28th day of June 1994



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

APR 21 1994

IA 94-008

Mr. Sean G. Miller
[Home Address Deleted
Under 10 CFR 2.790]

Dear Mr. Miller:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)
(NRC Inspection Report No. 50-237/92033; 50-249/92033;
NRC Investigation Report No. 3-92-055R)**

The enclosed Order is being issued as a consequence of events which occurred during operation of the Dresden Nuclear Station Unit 2 on September 18, 1992, and in violation of the Dresden Technical Specifications and Nuclear Regulatory Commission (NRC or Commission) regulations. The NRC conducted an inspection and an investigation of the event. The investigation by the NRC's Office of Investigations (OI) concluded that on September 18, 1992, you deliberately violated or caused violations of NRC requirements and the Dresden Technical Specifications. A copy of the synopsis of the OI report was forwarded to you by letter dated November 4, 1993. You were invited to participate in an enforcement conference scheduled on this matter for November 17, 1993, but you declined.

On September 18, 1992, a rod mispositioning incident occurred when a Nuclear Station Operator (NSO), a licensed operator, moved a control rod out of sequence during your shift as the Qualified Nuclear Engineer (QNE). You noticed the error, and the NSO continued to move control rods in violation of station procedures, at your direction and without the knowledge or authorization of the Station Control Room Engineer (SCRE), after which you informed the SCRE of the mispositioned rod. Subsequently, you, the SCRE, the NSO and the two nuclear engineers in training who were present during the incident agreed not to tell anyone else about the mispositioned rod incident. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, you falsified a Dresden Form 14-14C, and CECO management was not informed of the incident.

Your actions in connection with a deliberate attempt to conceal the September 18, 1992 event caused CECO to be in violation of 10 CFR 50.9, "Completeness and Accuracy of Information", and the Dresden license conditions, including technical specifications,

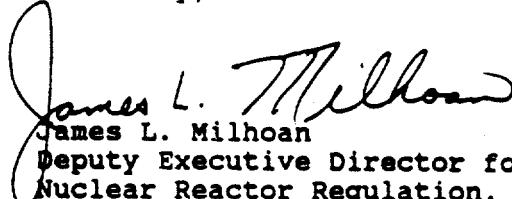
and constituted a violation of 10 CFR 50.5(a), "Deliberate Misconduct". In addition, by directing the NSO to continue to move control rods, you violated 10 CFR 55.3.

NRC does not have the requisite reasonable assurance that licensed activities will be properly conducted in accordance with regulatory requirements, including the requirement to provide information that is complete and accurate in all material respects, with you involved in licensed activities. Consequently, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately). Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning the Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities (Effective Immediately)

cc w/enclosure:

W. J. Wallace, Vice President and Chief Nuclear Officer
L. O. DelGeorge, Vice President, Nuclear Oversight
and Regulatory Services
M. Lyster, Site Vice President
G. Spedl, Station Manager
J. Shields, Regulatory Assurance Manager
D. Farrar, Nuclear Regulatory Services Manager
Richard Hubbard
J. W. McCaffrey, Chief Public Utilities Division
Robert Newmann, Office of Public Counsel
State of Illinois Center

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Sean G. Miller)
Coal City, Illinois)

IA 94-008

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Sean G. Miller was formerly employed by the Commonwealth Edison Company (CECo) from June 18, 1990, until he resigned his employment on December 2, 1992. He most recently held the position of Qualified Nuclear Engineer (QNE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECo holds Facility Licenses DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize CECo to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois. The licenses were issued by the NRC on December 22, 1969, and March 2, 1971, respectively.

II

On November 24, 1992, CECo notified the NRC that CECo senior managers had just become aware of an incident that had occurred on September 18, 1992, when Unit 2 was operating at 75% power. A Nuclear Station Operator (NSO), a licensed reactor operator, had incorrectly moved control rod H-1 while repositioning control rods to change localized power levels within the reactor core,

and the event was concealed from CECO management. Both CECO and NRC initiated an investigation of the incident.

On September 18, 1992, the NSO, a licensed operator, erroneously moved control rod H-1 from Position 48 (fully withdrawn) to Position 36. The NSO and two individuals in training to become nuclear engineers were in the control room when Mr. Miller, the QNE on duty and an unlicensed individual, recognized the NSO's error. Mr. Miller informed the NSO of the error, the NSO continued to move control rods at Mr. Miller's direction, without the knowledge or approval of the Station Control Room Engineer (SCRE), and then Mr. Miller informed the SCRE of the event. Later the SCRE spoke with Mr. Miller, the NSO and the two nuclear engineers in training and they all agreed that they would not discuss the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, Mr. Miller falsified a Form 14-14C plant record, and CECO management was not informed of the incident.

Dresden Technical Specification 6.2.A.1 stated that applicable procedures recommended in Appendix A of Regulatory Guide 1.33, Revision 2 dated February 1978, shall be established, implemented, and maintained. Regulatory Guide 1.33, Appendix A.1.c, included administrative procedures, general plant

operating procedures, and procedures for startup, operation, and shutdown of safety related systems.

Dresden Operating Abnormal Procedure (DOA) 300-12, "Mispositioned Control Rod", Revision 2, November 1991, Section C.2, required, in part, that if a control rod is moved more than one even notch from its in-sequence position, then all control rod movement must be discontinued. Section D.2.a.(1) required, in part, that if a single control rod is inserted more than one even notch from its in-sequence position and reactor power is greater than 20%, and if the mispositioning occurred within the last 10 minutes, then the mispositioned control rod must be continuously inserted to Position 00. Section D.6 required that an upper management representative will conduct an evaluation into the cause of the mispositioning and implement immediate corrective actions prior to the resumption of routine control rod movements.

These procedures were not followed. Specifically, the NSO failed to insert the mispositioned control rod to Position 00, and continued to move control rods solely at the direction of Mr. Miller and without the performance of an evaluation and corrective actions by an upper management representative.

Dresden Administrative Procedure (DAP) 14-14, "Control Rod Sequences," Revision 0, dated November 1991, section F.1.e, required that Form 14-14C, "Special Instructions", must provide

instructions which should be clearly stated and strictly adhered to and required that the instructions be approved by the QNE (in this case, Mr. Miller) and an operations shift supervisor.

However, on September 18, 1992, following the mispositioning of control rod H-1, control rod arrays 8D2 and 5 were moved at Mr. Miller's direction and without the completion of a Special Instruction Form 14-14C clearly stating the sequence, and without prior approval of Mr. Miller's instructions by an operations shift supervisor. By directing the continued movement of control rods without the approval of a licensed operator, Mr. Miller, who is not a licensed operator, violated 10 CFR 55.3. Furthermore, after these rods had been moved, Mr. Miller knowingly completed a Form 14-14C to indicate a different sequence of control rod movements than that which actually occurred. The effect of this inaccurate Form 14-14C was to conceal the mispositioning of control rod H-1 and the subsequent movement of control rods in violation of plant procedures.

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3-92-055R), I conclude that Mr. Miller, along with certain other CECO employees, deliberately attempted to conceal the mispositioned control rod event by failing to document the incident as required by plant procedures. By falsifying the Form 14-14C, Mr. Miller deliberately put CECO

in violation of Dresden Technical Specification 6.2.A.1, DAP 14-14, Section F.1.e., and 10 CFR 50.9, "Completeness and Accuracy of Information".

III

Based on the above, Mr. Miller, an employee of CECO at the time of the event, engaged in deliberate misconduct which caused CECO to be in violation of its license conditions and 10 CFR 50.9, and which constitutes a violation of 10 CFR 50.5 and 10 CFR 55.3.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to maintain records that are complete and accurate in all material respects. Mr. Miller's action in causing CECO to violate its license conditions and 10 CFR 50.9 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, including the requirements to maintain complete and accurate records. Mr. Miller's deliberate misconduct that caused CECO to violate Commission requirements cannot and will not be tolerated.

Consequently, I lack 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. Miller were permitted at this time to be engaged in the performance of NRC-licensed and

regulated activities. Therefore, the public health, safety and interest require that Mr. Miller be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Miller is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities as described in Section IV, Paragraph B, below, from whom he seeks employment in non-licensed activities to ensure that such employer is aware of Mr. Miller's previous history. For five years from the date of this Order, Mr. Miller is also required to notify the NRC of his employment by any person engaged in NRC-licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 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 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Miller is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.
- B. Should Mr. Miller seek employment in non-licensed activities with any person engaged in NRC-licensed activities for three years from the date of this Order, Mr. Miller shall provide a copy of this Order to such person at the time Mr. Miller is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting NRC-licensed activities pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.
- C. For three years from the date of this Order, Mr. Miller shall provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities for an employer engaged in NRC-licensed activities described in Paragraph IV.B, above.

D. After the three year prohibition has expired as described in Paragraphs IV.A and B above, Mr. Miller shall provide notice to the Director, Office of Enforcement, for acceptance of any employment in NRC-licensed activity for an additional two year period.

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

v

In accordance with 10 CFR 2.202, Mr. Miller must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Miller or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory

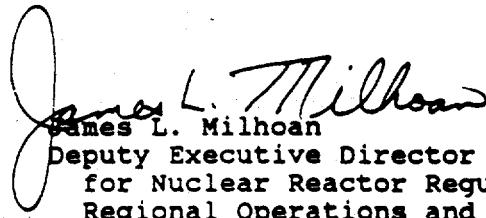
Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Miller, if the answer or hearing request is by a person other than Mr. Miller. If a person other than Mr. Miller 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 2.714(d).

If a hearing is requested by Mr. Miller or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Miller, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 21st day of April 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

AUG 26 1994

IA 94-018

Richard E. Odegard
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

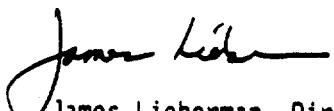
Based on an investigation conducted by the Nuclear Regulatory Commission's Office of Investigation, the NRC Staff has determined that you deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition, you deliberately failed to train and certify employees in radiation safety as required by the AMSPEC license conditions. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) IA 94-018
)
Richard E. Odegard)
)
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Richard E. Odegard has been employed as a radiographer in the field of industrial radiography since approximately 1978. On approximately June 20, 1989, Mr. Odegard was hired by the American Inspection Company, Inc. (AMSPEC). AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. Odegard was a Vice-President of AMSPEC at the time of license suspension.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. Odegard, in his capacity as a Vice-President and Area Manager for AMSPEC, conspired with other AMSPEC officials to deceive

the Commission regarding training of employees and, in addition, deliberately provided false sworn testimony to NRC officials.

AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual refers to employee training to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or limitation of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Between late 1989 and March 1, 1992, Mr. Odegard deliberately created false documents concerning the training of AMSPEC employees (documents that were required by the Commission's regulations to be maintained by AMSPEC), causing a violation of 10 CFR 30.9 by AMSPEC. During 1990 and 1991, Mr. Odegard deliberately provided unauthorized and improper aid to AMSPEC employees taking radiation safety examinations, a violation of License Condition 17. Between late 1989 and the end of 1991, Mr. Odegard deliberately falsified records of quarterly personnel radiation safety audits, causing violations of 10 CFR 30.9 and 34.11(d). On April 13, 1993, Mr. Odegard deliberately provided false

testimony under oath during the NRC investigation, a violation of 10 CFR 30.10.

On January 29, 1993, Mr. Odegard pled guilty to one felony count involving deliberate violations of the Atomic Energy Act based on his violations of these requirements.

III

Based on the above, Mr. Odegard engaged in deliberate misconduct which caused AMSPEC to be in violation of the training requirements of License Condition 17 and NRC regulations, including 10 CFR 30.9 and 34.11(d). The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. Odegard's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate misrepresentations to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, specifically the requirement to provide complete and accurate information to the NRC.

Mr. Odegard's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack 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. Odegard

were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Odegard be prohibited from engaging in NRC licensed activities (including supervising, training or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for a period of five years commencing after completion of the five-year period of prohibition, Mr. Odegard is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities, to ensure that the NRC can monitor the status of Mr. Odegard's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Richard E. Odegard is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which 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. During this time period, Mr. Odegard must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Richard E. Odegard shall, within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Odegard shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Richard E. Odegard must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Richard E. Odegard or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Richard E. Odegard if the answer or hearing request is by a person other than Richard E. Odegard. If a person other than Richard E. Odegard requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

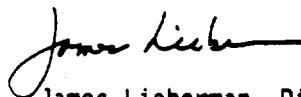
If a hearing is requested by Richard E. Odegard or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Richard E. Odegard or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order,

including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

MAR 10 1994

IA 94-001

Mr. Hartsell S. Phillips

(Address deleted)

Dear Sir:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)**

The enclosed Order is being issued because of your violations of 10 CFR Part 30 of the Commission's regulations as described in the Order.

Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

Hugh L. Thompson Jr.
Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure: As stated

cc: Logan General Hospital
State of West Virginia

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

IA 94-001

Hartsell S. Phillips

)

ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Hartsell S. Phillips is employed by Logan General Hospital, Logan, West Virginia. Logan General Hospital (Licensee) holds License No. 47-19919-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

Mr. Phillips has been employed by the Licensee since approximately June 1991 as the Chief Technologist, Radiation Safety Officer (RSO), and Chairman of Radiation Safety Committee with responsibilities involving compliance with NRC requirements for radiation protection. Mr. Phillips was removed as Chairman of the Radiation Safety Committee on January 1, 1994, and removed as RSO on February 18, 1994. On February 22, 1994, the Licensee informed the NRC that it had suspended, subject to termination, Mr. Phillips on February 18, 1994, based on information the Licensee had received through interviews with its staff and other information developed by the Licensee.

On December 7-8, 1993, an NRC inspection was conducted at the Licensee's facility in Logan, West Virginia. As a result of information developed during that inspection, an investigation by the Office of Investigations (OI) was initiated in January 1994. Although this investigation is continuing, OI interviews of Licensee personnel and review of documents provided by OI reveal that nuclear medicine technologists under Mr. Phillips' supervision and at his direction, and Mr. Phillips himself, deliberately increased radiopharmaceutical dosages administered to patients above the dosages prescribed by the authorized user and set forth in the Licensee's procedures manual, and falsified the dosage records of those patients by making them appear as if the prescribed dosages had been administered. The OI interviews indicate that this practice of increasing dosages and of falsifying records continued for an extended period of time. The exact number of patients affected is not clear, but involved numerous administrations.

In addition, Mr. Phillips falsified records and directed nuclear medicine technologists under his supervision to falsify records relating to: training of nuclear medicine technologists, required by 10 CFR 19.12; daily dose calibrator constancy checks, required by 10 CFR 35.50(b)(1); daily and weekly surveys in nuclear medicine areas, required by 10 CFR 35.70(a), (b), and (e); and

surveys related to the receipt and shipment of licensed material, required by 10 CFR 20.205(d) and License Condition 16.

Specifically, these records indicated that the training, checks and surveys had been performed when in fact they had not been performed. The records falsification occurred for an extended period of time and may have been as long as 15 months during 1992 and 1993, and involved the falsification of records for surveys and training in nuclear medicine required during this period of time. The investigation also revealed that Mr. Phillips specifically instructed one nuclear medicine technologist to deny having falsified records and advised others to be untruthful when questioned by NRC inspectors.

III

Although the NRC investigation is continuing, based on the above, Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of a number of NRC requirements including: (1) administration of radiopharmaceutical doses that differed from the prescribed doses, required by 10 CFR 35.25 and License Condition 16; (2) failure to provide training to nuclear medicine technologists, required by 10 CFR 19.12; (3) failure to perform the daily constancy checks of the dose calibrator, required by 10 CFR 35.50(b)(1); (4) failure to perform the required daily and weekly contamination and radiation surveys, required by

10 CFR 35.70(a), (b), and (e); (5) failure to perform the required surveys for radioactive material receipt, required by 10 CFR 20.205(d) and License Condition 16; and (6) failure to maintain accurate and complete records involving NRC-licensed activities (i.e., records of dose calibrator constancy checks (10 CFR 35.50(e)), radiation and contamination surveys (10 CFR 35.70(a), (b), and (h), and 10 CFR 20.401(b) and (c)), required by 10 CFR 30.9. Mr. Phillips also deliberately provided NRC inspectors information he knew to be inaccurate which was material to the NRC, also in violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 30.9.

As the RSO for the Licensee, Mr. Phillips was responsible, pursuant to 10 CFR 35.21(a), for ensuring that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements, including the administration of radiopharmaceuticals, performance of required surveys, and keeping of required records which evidence compliance with Commission requirements. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of NRC requirements, as noted above,

and submitted to the NRC information he knew to be incomplete or inaccurate, a violation of 10 CFR 30.10(a)(2).

Mr. Phillips' deliberate misconduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. In addition, Mr. Phillips' deliberate misconduct caused this Licensee to violate numerous Commission requirements and his deliberate false statements to Commission officials demonstrate conduct that cannot, and will not, be tolerated.

Consequently, in light of the numerous violations caused by Mr. Phillips' conduct, the length of time the noncompliances existed, and the deliberate nature of Mr. Phillips' actions, I lack 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 would be protected if Mr. Phillips were permitted at this time to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require, pending further action by the NRC, that Mr. Phillips be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 81, 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Pending further action by the NRC, Hartsell S. Phillips is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: 1) an NRC licensee, 2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and 3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

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

In accordance with 10 CFR 2.202, Hartsell S. Phillips must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent

to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Hartsell S. Phillips or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, NW, Atlanta, Georgia 30323, and to Hartsell S. Phillips, if the answer or hearing request is by a person other than Hartsell S. Phillips. If a person other than Hartsell S. Phillips requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Hartsell S. Phillips or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Hartsell S. Phillips, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 10th day of March 1994

September 19, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bloch, Chairman

Dr. Jerry R. Kline

Frederick J. Shon

In the matter of

Docket No. IA-94-001

HARTSELL D. PHILLIPS, JR.
West Virginia

Re:Allegation of Deliberate
Violations

ASLBP No. 94-694-05-EA

MEMORANDUM AND ORDER
(Dismissal Pursuant to Agreement)

On September 14, 1995, the parties to the above-captioned proceedings, Hartsell Phillips (Phillips) and the Staff of the United States Nuclear Regulatory Commission (Staff), informed the Atomic Safety and Licensing Board ("Licensing Board") of the following developments concerning this matter:

First, on June 5, 1995, Mr. Phillips pled guilty to a one-count Superseding Information stating a violation of law, related to the matters which are the subject of this proceeding. A copy of the United States District Court's Order of June 6, 1995, adjudging Mr. Phillips to be guilty and convicting him of the count charged in the Information, is attached. Sentencing of Mr. Phillips was conducted by the

950+606

Court on August 22, 1995, in accordance with the Court's Order of June 6, 1995.

Second, the parties have reached an agreement in settlement of this proceeding. Accordingly, we approve of the stipulation in the agreement and provide the requested relief.

ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 19th day of September, 1995, ORDERED, that:

1. Hartsell D. Phillips, Jr. is permitted to withdraw his request for hearing on the Staff's "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," dated March 10, 1994, and he is dismissed as a party in the proceeding pertaining to that Order;

2. The attached Stipulation is adopted as an order of this Board; and
3. The proceeding is dismissed with prejudice.

THE ATOMIC SAFETY AND LICENSING BOARD

Jerry R. Kline

Jerry R. Kline
Administrative Judge

Frederick J. Shan

Frederick J. Shan
Administrative Judge

Peter B. Bloch

Peter B. Bloch
Chairman

Rockville, Maryland

STIPULATION FOR SETTLEMENT OF PROCEEDING

THIS AGREEMENT is made by and between Hartsell Phillips ("Phillips") and the Staff of the United States Nuclear Regulatory Commission ("NRC Staff" or "Staff"), to wit:

WHEREAS Logan General Hospital, Logan, West Virginia ("Logan" or the "Licensee"), holds License No. 47-19919-01 issued by the NRC pursuant to 10 C.F.R. Parts 30 and 35, which license authorizes possession and use of byproduct material in accordance with the conditions specified therein; and

WHEREAS Phillips was employed by Logan, commencing in January 1991, as Chief Technologist, Radiation Safety Officer ("RSO") and Chairman of the Radiation Safety Committee ("RSC"), with responsibilities, *inter alia*, involving compliance with NRC requirements for radiation protection, until a date on which his employment was suspended by Logan in or about February 1994; and

WHEREAS on March 10, 1994, the NRC Staff issued an "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," 54 Fed. Reg. 13346 (March 21, 1994), based, *inter alia*, upon a finding that Phillips had engaged in deliberate misconduct in violation of 10 C.F.R. § 30.10, which caused the Licensee to be in violation of a number of NRC regulatory requirements; and

WHEREAS the Order prohibited Phillips, pending further action by the NRC, from participation in any respect in NRC-licensed activities, to include licensed activities of (1) an NRC licensee, (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 C.F.R. § 150.20, and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction; and

WHEREAS on March 30, 1994, Phillips filed a "Request for Hearing and Answer of Hartsell D. Phillips" concerning the Order, pursuant to 10 C.F.R. § 2.202, in response to which adjudicatory proceedings have been convened and remain pending before an Atomic Safety and Licensing Board ("Licensing Board") at this time; and

WHEREAS the undersigned parties recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of the matters now pending in litigation between them, including, without limitation, the elimination of further litigation expenses, uncertainty and delay, and other tangible and intangible benefits, which the parties recognize and believe to be in the public interest; and

WHEREAS, pursuant to 10 C.F.R. § 2.203, the Staff and Phillips have stipulated and agreed to the following

provisions for settlement of the above-captioned proceeding, subject to the approval of the Licensing Board, before the taking of any testimony or trial or adjudication of any issue of fact or law; and

WHEREAS Phillips is willing to waive his hearing and appeal rights regarding this matter, in consideration of the terms and provisions of this Stipulation and settlement agreement; and

WHEREAS the terms and provisions of this Stipulation, once approved by the Licensing Board, shall be incorporated by reference into an order, as that term is used in subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2201, and shall be subject to enforcement pursuant to the Commission's regulations and Chapter 18 of the Act, 42 U.S.C. § 2271 *et seq.*;

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Phillips agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities up to and including March 9, 1999, five years from the date of the NRC "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," dated March 10, 1994. In addition to the definition of "NRC-licensed activities" set forth above, said definition is understood to include any and all 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 C.F.R. § 150.20.

2. For a period of five years after the above-specified five-year period of prohibition has expired, i.e., from March 10, 1999 through March 9, 2004, Phillips shall, within 20 days of his acceptance of each and any employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined above; provide written notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities, and a detailed description of his duties and the activities in which he is to be involved.

3. In the first notification provided pursuant to Paragraph 2 above, Phillips shall include a statement of his commitment to compliance with regulatory requirements and an explanation of the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

4. The parties agree that, as an integral part of this stipulation and upon execution hereof, and subject to the

approval of this Stipulation by the Licensing Board, (a) Phillips will withdraw his March 30, 1994 request for hearing on the NRC Staff's Order of March 10, 1994, and (b) the parties will file a joint request for dismissal of the proceedings on that Order, with prejudice, it being understood and agreed that the Staff will take no further enforcement or other action against Phillips in connection with that Order.¹

5. It is understood and agreed that nothing contained in this Agreement shall be binding on, or preclude lawful action by, any other Government agency or department, including, without limitation, the United States Department of Justice and/or the United States Attorney.

¹ The parties recognize and agree that nothing in this Agreement shall be deemed to prohibit the NRC Staff from taking enforcement or other action (a) against Phillips for violation of this Agreement, or (b) against persons other than Phillips in connection with or related to any of the matters addressed in the Order of March 10, 1994, should the Staff determine, in its sole discretion, that it is appropriate to do so.

IN WITNESS WHEREOF, we set our hand and seal this 14th
day of September, 1995.

FOR HARTSELL PHILLIPS:

[signed]

Charles L. Woody
Counsel for Hartsell Phillips

FOR THE NRC STAFF:

[signed]

Sherwin E. Turk
Counsel for NRC Staff

[signed]

Hartsell D. Phillips, Jr.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

HARTSELL S. PHILLIPS

Docket No.(s) IA-94-001

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-95-16) 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.

Administrative Judge Peter B. Bloch, Chairman Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555	Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555
---	---

Administrative Judge Frederick J. Shon Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555	Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, DC 20555
--	--

Sherwin E. Turk, Esq. Office of the General Counsel Mail Stop 0-15 B 18 U.S. Nuclear Regulatory Commission Washington, DC 20555	Charles L. Woody, Esq. Spilman, Thomas & Battle 500 Virginia St., East, #1200 Union Ctr Charleston, WV 25321
---	---

Dated at Rockville, Md. this
19 day of September 1995

[Signature]
Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

APR 05 1994

IA 94-004

Mr. Douglas D. Preston
(Address deleted
Under 10 CFR 2.790)

Dear Mr. Preston:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (NRC INSPECTION REPORT NO. 50-
331/93020)**

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of your deliberately providing false information on applications you made for access authorization at the Iowa Electric Light and Power Company's (licensee) Duane Arnold Energy Center. On or about June 19, 1990, and on June 23, 1993, you indicated on your access authorization applications that you had not been arrested or convicted of a criminal offense other than minor traffic violations. The licensee subsequently learned that you had been arrested and convicted several times for crimes other than traffic violations and that you were incarcerated for some of those offenses. As a result of your deliberate false statements, you were granted unescorted access to the Duane Arnold facility in 1990 and again in 1993. A licensee investigator interviewed you about the false information at which time you indicated that you had lied on your applications in 1990 and 1993 and that you would lie again about your criminal record. The deliberate false information on your criminal history in your June 23, 1993 application caused you to be personally in violation of 10 CFR 50.5, "Deliberate Misconduct".

While you deliberately made the same false statements on your access authorization application of June 19, 1990, that instance is not being cited in the enclosed Order because it occurred prior to September 16, 1991, the date that 10 CFR 50.5 became effective.

Failure to comply with the provisions of the enclosed Order may result in civil or criminal sanctions.

Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

Mr. Douglas D. Preston

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosure:

Order Prohibiting Involvement in
NRC-Licensed Activities (Effective Immediately)

cc w/enclosure:

L. Liu, Chairman of the Board and
Chief Executive Officer
D. Wilson, Plant Superintendent
Nuclear Licensing
K. Young, Manager, Nuclear Licensing
Resident Inspector, RIII
Stephen Brown, Iowa Department
of Commerce
Licensing Project Manager, NRR
Berry Construction Company

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

MR. DOUGLAS D. PRESTON

)

IA 94-004

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Douglas D. Preston was employed by the Berry Construction Company at the Iowa Electric Light and Power Company's (IELPC or Licensee) Duane Arnold Energy Center where he was granted unescorted access. IELPC holds Facility License DPR-49, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on February 22, 1974. The license authorizes IELPC to operate the Duane Arnold Energy Center located near Cedar Rapids, Iowa, in accordance with the conditions specified therein.

II

Mr. Preston first applied for employment with Berry Construction Company and was subsequently granted unescorted access to the Duane Arnold Energy Center on or about June 19, 1990, based in part on the representations he made on his access authorization applications. One of the representations was that he had not been arrested and convicted for any criminal offense other than minor traffic violations. The Licensee submitted fingerprint cards to the Federal Bureau of Investigations (FBI) and subsequently was

informed that Mr. Preston had a record of arrests, convictions, and imprisonments prior to 1978. However, while waiting for the results of the FBI fingerprint check, Mr. Preston's employment at the Duane Arnold Energy Center was terminated for a lack of work. Mr. Preston's deliberate false statements on his access authorization application on or about June 19, 1990 were essentially the same as his 1993 false statements (addressed below), but are not being cited in this Order as a violation because they were made before the effective date of 10 CFR 50.5.

On June 21, 1993, Mr. Preston again applied for a position at the Duane Arnold Energy Center and was hired on June 21, 1993 by the Berry Construction Company as a laborer with responsibilities involving NRC-licensed activities. On June 23, 1993, Mr. Preston filled out an access authorization application and again denied having a criminal history. The Licensee granted Mr. Preston temporary unescorted access to the plant on or about July 15, 1993. On or about August 13, 1993, the Licensee received the results of a second FBI fingerprint check which again detailed Mr. Preston's criminal history. Mr. Preston, when questioned by an IELPC investigator on August 13, at first denied having a criminal history and then admitted that he had lied about his criminal history to gain employment in 1990 and again in 1993. He further stated that he would lie again to gain employment in the future. The Licensee then revoked Mr. Preston's unescorted access based on the deliberately false information regarding his criminal history.

on his access authorization application.

Based on the above, Mr. Preston engaged in deliberate misconduct on or about June 23, 1993, by deliberately falsely stating on the access authorization application that he had no criminal history for crimes other than minor traffic offenses. The Commission's regulations in 10 CFR 50.5, in part, prohibit any employee of a contractor of a licensee from deliberately submitting to the licensee information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Mr. Preston's actions constitute a violation of 10 CFR 50.5(a). Information concerning criminal history is material to the determination the licensee must make to meet 10 CFR 73.56(b)(2).

III

The NRC must be able to rely on the Licensee, its contractors, and the licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Preston's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations and his statement to the Licensee that he would do it again have raised serious doubt as to whether he can be relied upon to comply with

NRC requirements and to provide complete and accurate information to the NRC in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities within NRC jurisdiction can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Preston were permitted to be engaged in the performance of licensed activities. Therefore, the public health, safety and interest require that Mr. Preston be prohibited from being involved in the performance of activities licensed by the NRC for a five year period. In addition, Mr. Preston is required to notify the NRC, for an additional five year period, of his acceptance of employment in NRC-licensed activities so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 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 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT :

A. Mr. Douglas D. Preston is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. For the purposes of this Order, licensed activities include the activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

B. After the five year prohibition has expired as described in paragraph A above, Mr. Preston shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, for acceptance of any employment in licensed activity for an additional five year period.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Preston of good cause.

In accordance with 10 CFR 2.202, Mr. Preston must, and any other person adversely affected by this Order may, submit an answer to

this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Preston or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Preston, if the answer or hearing request is by a person other than Mr. Preston. If a person other than Mr. Preston 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 2.714(d).

If a hearing is requested by Mr. Preston or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Preston, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman
James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 5th day of April 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

March 3, 1995

IA 95-03

Forrest L. Roudebush
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC

Dear Mr. Roudebush:

The enclosed Order is being issued as the result of an investigation by the NRC Office of Investigations (OI) and a hearing before the NRC Atomic Safety and Licensing Board (ASLB) which found that you were responsible for deliberate violations of NRC requirements while you were the owner and president of Piping Specialists Incorporated (PSI), also known as PSI Inspection. The violations are fully described in the Order.

The Order prohibits your involvement in NRC-licensed activities for a period of five years beginning October 17, 1991, the date of the Immediately Effective Order that suspended the license of PSI. In addition, for a period of five years after the five year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in 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 is subject to criminal prosecution as set forth in that section.

You are required to respond to this Order and should follow the instructions specified in Section V of the Order when preparing your response. Questions concerning this Order should be addressed to Ms. Patricia A. Santiago, Assistant Director for Materials, Office of Enforcement, who can be reached at (301) 415-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter with your address removed, and the enclosures will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

The responses directed by this letter and the enclosed Order are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Docket No. 030-29626
License No. 24-24826-01

Enclosure:
Order Prohibiting Involvement
in NRC Licensed Activities
and Requiring Certain Notification
to NRC

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) IA 95-03
FORREST L. ROUDEBUSH)
Kansas City, Missouri)

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
AND REQUIRING CERTAIN NOTIFICATION TO NRC

I

Mr. Forrest L. Roudebush has been, from its inception, the owner and president of Piping Specialists Incorporated (PSI or licensee), also known as PSI Inspection, which was the holder of Byproduct Material License No. 24-24826-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on March 6, 1987. The license authorized the use of byproduct material (iridium-192 and cobalt-60) for industrial radiography in devices approved by the NRC or an Agreement State. The facility where licensed materials were authorized for storage was located at 1010 East 10th Street, Kansas City, Missouri. The use of licensed materials was authorized at temporary job sites anywhere in the United States that the NRC maintains jurisdiction for regulating the use of licensed materials. On October 17, 1991, the NRC staff issued an Order Suspending License (Effective Immediately) to PSI. On April 22, 1992, the NRC staff issued to PSI an Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License. The revocation of the license was upheld by a decision of the NRC Atomic Safety and Licensing Board (ASLB), *Piping Specialists, Inc. and Forrest L. Roudebush, LBP 92-25, 36 NRC 156 (1992)*, which the Commission declined to review, *CLI-92-16, 36 NRC 351 (1992)*.

NRC Region III initiated an inspection of the Licensee on September 4, 1991, and on September 24, 1991, the NRC Office of Investigations (OI) commenced an investigation based on information received on August 29, 1991, that the PSI radiation safety program was not being conducted in compliance with NRC rules, regulations, and license conditions. The inspection and investigation focused on the Licensee's compliance with NRC regulations, including possible willful violations involving: (1) false statements to NRC inspectors and investigators; (2) use of unauthorized and/or unqualified radiographer's assistants while conducting radiography; (3) preparation of false, inaccurate, and incomplete records; (4) failure to provide or use personnel dosimetry devices while conducting radiography; and (5) failure to survey and post radiation area boundaries to provide notice of radiation hazards to the public while performing radiography.

The OI investigation was completed on February 21, 1992, and identified the following deliberate violations of NRC requirements attributable to Mr. Roudebush:

- A. In violation of 10 CFR 30.9, the PSI Radiation Safety Officer (RSO), with the prior knowledge of Mr. Roudebush, deliberately provided incomplete and inaccurate information to NRC inspectors during inspections conducted on March 21 and September 17-18, 1991. Specifically, the RSO presented to the inspectors the Licensee's utilization log, records of pocket dosimeter readings, and records of

surveys of radiographic exposure devices performed at the time of the storage of the device at the end of the work day. Those records were neither complete nor accurate because: (1) the records did not document the licensee's uses of the radiographic exposure devices which occurred during periods when the licensee's personnel dosimetry service was interrupted due to the nonpayment of service fees; and (2) the information in the records had not been recorded daily as required, but instead, had been fabricated *en masse* shortly before the inspections. Further, the RSO and Mr. Roudebush knew that the records were inaccurate and that the records had been fabricated by the RSO immediately before the inspections.

B. In violation of 10 CFR 30.9, during an interview with OI on October 16, 1991, Mr. Roudebush, under oath, after defining a radiographer's assistant as one who ". . . handles and operates the enclosure, handle [sic] and operates the device, handles and operates the survey meter, takes charge of that dosimeter", denied to an OI investigator that he had performed work as a radiographer's assistant. This statement was deliberately false because during the NRC inspection conducted on September 17-18, 1991, Mr. Roudebush acknowledged that he had attached the control cable and guide tube to a radiographic exposure device and had exposed and retracted the source during radiographic operations. Mr. Roudebush was not qualified as a radiographer or assistant radiographer.

The investigation found other deliberate violations of NRC requirements, as well as a number of violations that in the aggregate represented a breakdown in the management of the PSI radiation safety program. Those violations are discussed in the October 17, 1991 Order Suspending License (Effective Immediately), EA 91-136; and the April 22, 1992 Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License, EA 92-054. Those orders discuss why the staff does not have reasonable assurance that the licensee or Mr. Roudebush would comply with NRC requirements in the future.

The ASLB conducted a hearing from April 28 to May 1, 1992 on the October 17, 1991 Order Suspending License (Effective Immediately) and the April 22, 1992 Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License.

The ASLB, in its Final Initial Decision (Revoking License), LBP-92-25, 36 NRC 156 (1992), stated:

We conclude that there have been extensive failures on the part of PSI and Mr. Roudebush to comply with NRC regulations. The Board finds that the Licensee has failed to act as a reasonable manager of licensed activities; failed to detect and correct violations caused by an employee; willfully attempted to conceal violations from NRC Staff, and given untruthful information to the Staff during its inspections and investigations. Moreover, we find that

Mr. Roudebush was untruthful in some aspects of his testimony both during a formal investigation and this Licensing Board. *Id.*, at 186.

Pursuant to a plea agreement, on August 18, 1994, Mr. Roudebush pled guilty in the U.S. District Court for the Western District of Missouri to one criminal count of violating Title 42, United States Code, Sections 2273 and 2201(b) and (i) (§§161b, 161i, and 223 of the Atomic Energy Act). Specifically, the agreement describes the nature of the offense as the failure to provide dosimetry devices to employees. As a result, on December 12, 1994, an amended judgment was filed whereby Mr. Roudebush was sentenced to two years probation. The terms of the probation, in part, provide that Mr. Roudebush shall not apply for or obtain a license for radiography during the probation period.

III

Based on the above, the NRC concludes that Forrest L. Roudebush, the owner and president of PSI, engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 30.9, 30.10, and 34.33. Mr. Roudebush deliberately provided information to NRC inspectors and investigators that he knew to be incomplete or inaccurate in some material respect to the NRC, and Mr. Roudebush was deliberately untruthful during portions of his testimony to the ASLB, in violation of 10 CFR 30.9 and 30.10. Further, Mr. Roudebush deliberately failed to provide dosimetry devices to his employees, in violation of 10 CFR 34.33 and 30.10. The NRC must be able to rely on its licensees, including their officers and employees, to comply with NRC

requirements, including the requirement to provide information and to maintain records that are complete and accurate in all respects material to the NRC.

The deliberate actions of Forrest L. Roudebush in causing the Licensee to violate 10 CFR 30.9, 30.10, and 34.33, and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied on to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Forrest L. Roudebush will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Forrest L. Roudebush were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that, for a period of five years from October 17, 1991, the date that the PSI license was suspended by Immediately Effective Order, Forrest L. Roudebush be prohibited from any involvement in NRC-licensed activities for either: (1) an NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for a period of five years commencing after completion of the five year period of prohibition, Mr. Roudebush must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Roudebush's compliance with the Commission's requirements and his understanding of his commitment to compliance. If Mr. Roudebush is currently involved with another licensee in NRC-licensed activities, Mr. Roudebush must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Forrest L. Roudebush is prohibited until October 17, 1996 from engaging in any 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. For a period of five years, beginning October 17, 1996, after the five-year period of prohibition has expired, Forrest L. Roudebush shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his 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, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Forrest L. Roudebush shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

3. If Forrest L. Roudebush is currently involved with any NRC licensee or Agreement State licensee engaging in NRC-licensed activities, then Forrest L. Roudebush must, as of the effective date of this Order, cease such activities and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

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

V

In accordance with 10 CFR 2.202, Forrest L. Roudebush must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Roudebush or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, and to the Regional Administrator, NRC

Region III, 801 Warrenville Road, Lisle, Illinois 60532-4531 if the answer or hearing request is by a person other than Mr. Roudebush. If a person other than Mr. Roudebush requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Roudebush or 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, on the basis of the matters described in: (1) this Order; (2) EA 91-136; (3) EA 92-054; and (4) LBP-92-25, 36 NRC 156 (1992), this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 3rd day of March 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON D C 20585-0001

JUN 13 1994

Docket No. 030-19747
License No. 52-21082-01 (expired)
IA 94-013

Guillermo Velasquez, M.D.
959 Americo Miranda
Reparto Metropolitano
(Rio Piedras) San Juan, PR 00921

Dear Dr. Velasquez:

SUBJECT: CONFIRMATORY ORDER

This is in reference to the Order to Transfer Byproduct Material to an Authorized Recipient (Effective Immediately) and Demand for Information issued by the NRC on July 21, 1993, your Answer to the Demand for Information dated September 13, 1993, and a completed NRC Form 314 dated January 24 1994, notifying the NRC of the transfer of all licensed material previously in your possession to an authorized recipient.

In your sworn response to the Demand for Information, you stated that you did not intend to perform any licensed activities either personally or on behalf of anyone else in the future. In a telephone conversation between Mr. Charles M. Hosey of the NRC Region II office and yourself on June 2, 1994, you agreed to the issuance of an order that would confirm that you would not participate in activities licensed by the NRC for a period of three years and would contain a requirement to notify the NRC the first time (if any) you engage in licensed activities thereafter. Based on these representations, we are issuing the enclosed Confirmatory Order.

In addition to the Confirmatory Order, we are enclosing Amendment 2 to your license which formally terminates your license.

Questions concerning the Order may be addressed to Ms. Patricia Santiago, Assistant Director for Materials, Office of Enforcement, at telephone number (301) 504-3055.

Guillermo Velasquez, M.D.

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room.

Sincerely,

James Lieberman
James Lieberman, Director
Office of Enforcement

Enclosures:

1. Confirmatory Order
2. License Amendment No. 2

cc w/encls:

Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

GUILLERMO VELASQUEZ, M.D.
San Juan, Puerto Rico

)
Docket No. 030-19747
License No. 52-21082-01
IA 94-013

CONFIRMATORY ORDER

I

Guillermo Velasquez, M.D. (Licensee) is the holder of expired Byproduct Materials License No. 52-21082-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on September 3, 1982. The license authorized the use of strontium-90 for ophthalmic radiotherapy in accordance with the conditions specified therein. The license was renewed in its entirety on August 21, 1987, and expired on August 31, 1992. The byproduct material remained in the possession of the Licensee until it was transferred to an authorized recipient on January 7, 1994 pursuant to an NRC Order to Transfer Byproduct Material to an Authorized Recipient (Effective Immediately) and Demand for Information issued July 21, 1993.

II

The Licensee did not submit an application for renewal of the license prior to its expiration, as required by 10 CFR 30.37, nor did the Licensee notify the Commission in writing, pursuant to 10 CFR 30.36, of a decision not to renew the license. Therefore, on September 11, 1992, NRC Region II issued a Notice of Violation (Notice) to the Licensee for failure to request renewal prior to expiration of the license or to file a notice of non-renewal or transfer of

the byproduct material. The letter forwarding the Notice directed the Licensee to place the strontium-90 in storage and to discontinue use of the material until he obtained a new NRC license. In the alternative, the Licensee was directed to transfer the material to an authorized recipient if adequate storage was not available, or to submit an NRC Form 314 to the NRC if the Licensee chose to dispose of the byproduct material. During a December 4, 1992 telephone conversation between a Region II inspector and the Licensee, the Licensee stated that the source was locked in storage and that the Licensee had not used the source. The Licensee responded to the Notice on December 4, 1992, by requesting renewal of the license. Because the Licensee failed to provide the appropriate licensing fee, no action was taken by the NRC to renew the license and the Licensee was notified.

The NRC performed a routine inspection of the Licensee's facility in Rio Piedras, Puerto Rico on February 24, 1993. One purpose of this inspection was to determine the status of the strontium-90 source. The inspection revealed that the Licensee had continued to use the material (1) after expiration of the license; (2) after receipt of the NRC letter and Notice dated September 11, 1992, which directed the Licensee to place the material in storage and to discontinue use of the material until a new license was obtained; and (3) after the December 4, 1992 telephone conversation with the Region II inspector when the inspector explained that the source could not be used and the Licensee had stated the source was in locked storage and not being used.

In April and May 1993, the NRC Office of Investigations conducted an investigation of the circumstances surrounding the Licensee's apparent use of

the source after the license had expired and after receiving notification from the NRC to discontinue use of the material until a new license was obtained. As a result of this investigation, it was determined that on 20 occasions, between October 9, 1992, and February 19, 1993, the Licensee, with the full understanding that use of the source was prohibited, deliberately used the strontium-90 source for patient ophthalmic radiotherapy, in violation of 10 CFR 30.3. In addition, the investigation confirmed that the Licensee deliberately provided false information to the NRC inspector during the December 4, 1992 telephone conversation and during the inspection conducted at the Licensee's facility on February 24, 1993. Specifically, the Licensee told the NRC inspector that the strontium-90 source had not been used for ophthalmic radiotherapy since receipt of the Notice which was issued on September 11, 1992, when in fact the Licensee had used the strontium-90 source at least 20 times between October 9, 1992 and February 19, 1993, which was as recently as five days before the inspection. This deliberate submission of materially false information constitutes violations of 10 CFR 30.9 and 30.10.

III

Based on the NRC inspection and the subsequent investigation, the NRC determined that the Licensee, by continuing to use licensed material after being notified of the expiration of the license which authorized that use and by deliberately providing false information to an NRC inspector, had demonstrated an unwillingness to comply with Commission requirements. The Commission must be able to rely on its licensees to provide complete and accurate information. Willful violations are of particular concern to the

Commission because they undermine the Commission's reasonable assurance that licensed activities are being conducted in accordance with NRC requirements. Therefore, on July 21, 1993, the NRC issued an Order to the Licensee requiring the transfer of the strontium-90 source to an authorized recipient within 45 days of the date of the Order. The NRC also issued a Demand for Information with the Order requiring the Licensee to submit a written statement, under oath or affirmation, stating why the NRC should have confidence that in the future the Licensee would comply with NRC requirements or provide complete and accurate information to the NRC.

The Licensee responded to the Order in letters dated September 7 and 13, 1993, and in telephone conversations with the NRC Region II staff on September 10 and 20, 1993. During these communications, the Licensee indicated that he was making a good faith effort to transfer the byproduct material to an authorized recipient. Based on this good faith effort, the NRC by letter dated October 15, 1993, extended the strontium-90 transfer date to December 6, 1993. On January 24, 1994, the Licensee submitted a completed NRC Form 314 notifying the NRC that the strontium-90 source had been transferred to an authorized recipient and provided the documentation required by the Order to demonstrate that the source was tested for leakage prior to the transfer and that the transfer had taken place.

On September 13, 1993, the Licensee responded to the Demand for Information indicating that he did not intend to perform licensed activities or to use the strontium-90 source in his possession, or one in anyone else's possession. Further, in a telephone conversation on June 2, 1994, with Mr. Charles M.

Hosey of the NRC Region II office, Dr. Velasquez agreed to the provisions and to the issuance of this Confirmatory Order. I find that the Licensee's commitments as set forth in that conversation are acceptable and necessary and 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 the Licensee's commitments in the telephone call of June 2, 1994 be confirmed by this Order.

IV

Accordingly, pursuant to Sections 81, 161b, 1611, 1610, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations at 10 CFR 2.202 and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED THAT:

1. For a period of three years from the date of this Confirmatory Order, Guillermo Velasquez, M.D., shall not supervise or engage in any way in NRC-licensed activities. NRC-licensed activities are those activities which 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. For a period of three years from the date of this Order, Dr. Velasquez shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1. above) prior to his acceptance of employment with such prospective employer. The purpose of

this requirement is to ensure that the employer is aware of Dr. Velasquez' prohibition from engaging in NRC-licensed activities.

3. The first time Guillermo Velasquez, M.D., is employed in NRC licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, prior to engaging in NRC licensed activities including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

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

v

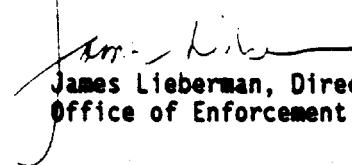
Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the date of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900,

Atlanta, Georgia 30323 and to the Licensee. If such a person 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 2.714(d).

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, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 24 day of June 1994



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

APR 21 1994

Docket No. 55-30849
License No. SOP-30516-01
IA 94-006

Mr. David Tang Wee
[Home Address Deleted
Under 10 CFR 2.790]

Dear Mr. Tang Wee:

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY
(NRC INSPECTION REPORT NO. 50-237/92033; 50-249/92033;
NRC INVESTIGATION REPORT NO. 3-92-055R)**

The enclosed Order is being issued as a consequence of events which occurred during operation of the Dresden Nuclear Station Unit 2 on September 18, 1992 and in violation of Nuclear Regulatory Commission (NRC or Commission) regulations and of the Dresden Technical Specifications. The NRC conducted an inspection and an investigation of the event. The investigation by the NRC's Office of Investigations (OI) concluded that on September 18, 1992 you deliberately violated or caused violations of NRC requirements and the Dresden Technical Specifications. A copy of the synopsis of the OI report was forwarded to you by letter dated November 4, 1993. An enforcement conference was held with you on November 17, 1993.

On September 18, 1992, a rod mispositioning event occurred when a Nuclear Station Operator (NSO) moved a control rod out of sequence during your shift as the Station Control Room Engineer (SCRE). The error was noticed by a Qualified Nuclear Engineer (QNE). The NSO continued to move control rods in violation of station procedures, at the QNE's direction and without your knowledge or authorization, after which the QNE informed you of the mispositioned rod. Subsequently, you, the NSO, the QNE, and the two nuclear engineers in training who were present during the incident, agreed not to tell anyone else about the mispositioned rod incident. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, a Dresden Form 14-14C was falsified, and Commonwealth Edison Company (CECO) management was not informed of the incident. The OI investigation also concluded, based on the testimony of three other individuals involved in the September 18, 1992 incident, that you deliberately provided inaccurate information to NRC investigators

during your transcribed interview on December 1, 1992 when you denied making a statement to the effect that the information about the mispositioned control rod should not leave the control room.

Your actions in connection with the attempt to conceal the September 18, 1992 event caused CECO to be in violation of its license conditions, including technical specifications and administrative procedures, and constituted a violation of 10 CFR 50.5(a), "Deliberate Misconduct". Furthermore, your provision of inaccurate information which was material to NRC investigators constituted a violation of 10 CFR 55.9, "Completeness and Accuracy of Information".

NRC does not have the requisite reasonable assurance that licensed activities will be properly conducted in accordance with regulatory requirements, including the requirement to provide information that is complete and accurate in all material respects, with you involved in licensed activities. Consequently, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately). Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning the enclosed Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,

James L. Milhoan
James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Enclosure:

Order Prohibiting Involvement
in NRC-Licensed Activities
(Effective Immediately)

cc w/enclosure: See Next Page

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) Docket No. 55-30849
David Tang Wee) License No. SOP-30516-01
Tinley Park, Illinois) IA 94-006

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. David Tang Wee (Licensee) held Senior Reactor Operator's License No. SOP-30516-01 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 14, 1985. Mr. Tang Wee was employed by Commonwealth Edison Company (CECo) between June 22, 1981 until his employment was terminated by CECO on December 2, 1992, an action which terminated license SOP-30516-01. The Licensee most recently held the position of Station Control Room Engineer (SCRE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECO holds Facility Licenses DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize CECO to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois.

II

On November 24, 1992, CECO notified the NRC that CECO senior managers had just become aware of an incident that had occurred on September 18, 1992 when Unit 2 was operating at 75% power. A Nuclear Station Operator (NSO), who was a licensed reactor

operator, incorrectly positioned control rod H-1 while repositioning control rods to change localized power levels within the reactor core, and the event was concealed from CECO management. Both CECO and the NRC initiated investigations of the incident.

On September 18, 1992, the NSO erroneously moved control rod H-1 from Position 48 (fully withdrawn) to Position 36. A Qualified Nuclear Engineer (QNE) and two individuals in training to become "qualified" nuclear engineers were in the control room when the QNE recognized the NSO's error. The QNE informed the NSO of the error. The NSO failed to insert the mispositioned rod to Position 00 and continued to move other control rods at the direction of the QNE. The QNE then informed Mr. Tang Wee, the Station Control Room Engineer on duty, of the mispositioned rod. Later, Mr. Tang Wee spoke with the NSO and the three nuclear engineers and they all agreed that they would not discuss the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, a Dresden Form 14-14C was falsified, and CECO management was not informed of the incident.

The NRC licenses individuals pursuant to 10 CFR Part 55, "Operators' Licenses," to manipulate the controls of an utilization facility. The operator license requires the

individual to observe all applicable rules, regulations and orders of the Commission, including the operating procedures and other conditions specified in the facility license.

Dresden Technical Specification 6.2.A.1 stated that applicable procedures recommended in Appendix A of Regulatory Guide 1.33, Revision 2 dated February 1978, shall be established, implemented, and maintained. Regulatory Guide 1.33 Appendix A.1.c included administrative procedures, general plant operating procedures, and procedures for startup, operation, and shutdown of safety related systems.

Dresden Operating Abnormal Procedure (DOA) 300-12, "Mispositioned Control Rod," Revision 2, dated November 1991, section D "Subsequent Operator Actions," step 2, required, in part, that if a single control rod was inserted greater than one even notch from its in-sequence position and reactor power was greater than 20 $\frac{1}{2}$, then the mispositioned rod must be continuously inserted to position 00. Section D.5 required, in part, that the NSO record any mispositioned control rod in the Unit log book.

Dresden Administrative Procedure, (DAP) 07-29, "Reactivity Management Controls," Revision 0, section F.1.g required, in part, that the station control room engineer (SCRE) communicate to the NSO the requirements for procedural adherence.

Dresden Administrative Procedure, (DAP) 07-01, "Operations Department Organization", Section B.5.e., requires in part that the SCRE report any abnormal operating conditions to the Shift Engineer.

These procedures were not followed. Specifically, Mr. Tang Wee did not communicate to the NSO requirements for procedural adherence concerning the NSO's duty to record the mispositioning incident in the unit control room log, and did not report the mispositioning incident to the Shift Engineer. Instead, Mr. Tang Wee agreed with the NSO, the QNE and two nuclear engineers in training that they would not discuss the incident with anyone else.

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3-92-055R), I conclude that Mr. Tang Wee, along with the NSO, the QNE and two nuclear engineers in training, deliberately attempted to conceal the mispositioned control rod event by failing to document and report the incident as required by plant procedures. In furtherance of this agreement, Mr. Tang Wee deliberately caused CECO to be in violation of Dresden Technical Specification 6.2.A.1; DAP 07-29, Revision 0, Section F.1.g; and DAP 07-01, Section B.5.e, by failing to communicate to the NSO the requirement to record the mispositioned rod event in the control room log and by failing to report the event to the Shift Engineer.

Further, in a transcribed sworn statement on December 1, 1992, Mr. Tang Wee stated that he did not have a reason to make, and did not believe he made, a statement to the effect that information about the mispositioned control rod should not leave the control room. Based on the transcribed testimony of three individuals who were present during the incident that Mr. Tang Wee had made a statement to them to the effect that information about the mispositioned control rod should not leave the control room, and that all five individuals had agreed not to discuss the event with anyone else, I conclude that Mr. Tang Wee's testimony to the contrary constituted the deliberate provision of inaccurate information material to the NRC in violation of 10 CFR 55.9, "Completeness and Accuracy of Information."

III

Based on the above, Mr. Tang Wee, an employee of CECO at the time of the event, engaged in deliberate misconduct which caused CECO to be in violation of its license conditions and which constitutes a violation of 10 CFR 50.5. Further, Mr. Tang Wee, a licensed senior reactor operator at the time of the event, deliberately provided to NRC investigators information which he knew to be inaccurate in some respect material to the NRC, in violation of 10 CFR 55.9.

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Tang Wee's action in causing CECO to violate its license conditions and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed facilities and licensed individuals and to provide complete and accurate information to the NRC. Mr. Tang Wee's deliberate misconduct that caused CECO to violate Commission requirements, and his false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack 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. Tang Wee were permitted at this time to be engaged in the performance of NRC-licensed and regulated activities. Therefore, the public health, safety and interest require that Mr. Tang Wee be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Tang Wee is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities as described in Section IV, Paragraph B, below, from whom he seeks

employment in non-licensed activities in order to ensure that such employer is aware of Mr. Tang Wee's previous history. For five years from the date of the Order, Mr. Tang Wee is also required to notify the NRC of his employment by any person engaged in licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 107, 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, 10 CFR 50.5, and 10 CFR 55.61, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Tang Wee is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.
- B. Should Mr. Tang Wee seek employment in non-licensed activities with any person engaged in NRC-licensed activities in the three years from the date of this Order, Mr. Tang Wee shall provide a copy of this Order

to such person at the time Mr. Tang Wee is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

- C. For three years from the date of this Order, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities from an employer engaged in NRC-licensed activities, as described in Paragraph IV.B, above.
- D. After the three year prohibition has expired as described in Paragraphs IV.A and B, above, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, of acceptance of any employment in NRC-licensed activity for an additional two year period.

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

In accordance with 10 CFR 2.202, Mr. Tang Wee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Tang Wee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Tang Wee, if the answer or hearing request is by a person other than Mr. Tang Wee. If a person other than Mr. Tang Wee

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 2.714(d).

If a hearing is requested by Mr. Tang Wee or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Tang Wee, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN

ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE
EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James L. Milhoan
James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 21st day of April 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

December 12, 1994

IA 94-035

Mr. Rex Allen Werts
(Address deleted
under 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
AND UNESCORTED ACCESS (EFFECTIVE IMMEDIATELY)
OI INVESTIGATION REPORT SYNOPSIS (2-93-052R)

Dear Mr. Werts:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effectively Immediately) is being issued as a consequence of the deliberate false statements you made on an application for access authorization at the Carolina Power and Light Company's (Licensee) Brunswick Nuclear Plant. On or about March 11, 1993, you used an alias on your access authorization application and indicated on the application that you had not been arrested or convicted of any criminal offense. As a result of your deliberate false statements, you were granted unescorted access to the Brunswick Nuclear Plant on March 24, 1993. The Licensee subsequently learned of your use of an alias and that you had been arrested and convicted several times for crimes and were incarcerated for some of those offenses. A licensee supervisor interviewed you about your application, at which time you admitted that you had submitted false information on your application.

10 CFR 50.5(a)(2), "Deliberate misconduct," prohibits an employee of an NRC licensee or licensee contractor from deliberately submitting information to the licensee or licensee contractor that the employee knows to be incomplete or inaccurate in some respect material to the NRC. 10 CFR Part 2, Appendix C, "General Statement of Policy and Procedures for NRC Enforcement Actions," in particular Section VIII, "Enforcement Action Involving Individuals," provides guidance and considerations for enforcement sanctions against individuals who deliberately violate NRC requirements.

The NRC Office of Investigations (OI) conducted an investigation (2-93-052R) to determine whether you committed a willful violation in connection with your making false statements regarding your criminal background. The OI investigation concluded that you had deliberately provided false information concerning your criminal arrest and conviction record in order to gain unescorted access to the site protected area. By letter dated September 14, 1994, the NRC attempted to provide you with a copy of the OI investigation synopsis and afford you an opportunity for an enforcement conference prior to making a final decision regarding escalated enforcement action in your case. The letter has been returned by the post office as undeliverable and we have been unable to locate you. A copy of the September 14, 1994, letter with the OI synopsis attached is enclosed (Enclosure 1). If attempts to deliver this letter and the enclosed Order are not successful, it will not delay the effective date of the enclosed Order nor the placement of this letter and enclosed Order in the Public Document Room.

The false information you provided regarding your criminal history on the March 11, 1993 access authorization application is a violation of 10 CFR 50.5, "Deliberate misconduct." Such conduct is unacceptable to the NRC. Therefore, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately). 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.

You are required to provide a response to this Order and should do so within 20 days. Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your home address removed, its enclosures and any response will be placed in the NRC's Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Sincerely,


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Enclosures: 1. September 14, 1994 letter with OI synopsis
2. Order Prohibiting Involvement in NRC-Licensed
Activities and Unescorted Access (Effective Immediately)

cc w/encls: (See next page)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
REX ALLEN WERTS)
(Also Known As:)
MICHAEL ALLEN HUNTER))

IA 94-035

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES AND UNESCORTED ACCESS
(EFFECTIVE IMMEDIATELY)

I

Mr. Rex Allen Werts (Also Known As: Michael Allen Hunter) was employed by Power Plant Maintenance, Inc., (PPM) a contractor of the Carolina Power and Light Company (CP&L or Licensee), from March 24, 1993 until his unescorted access was revoked on July 26, 1993. Licensee is the holder of License Nos. DPR-62 and DPR-71 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on December 27, 1974 and November 12, 1976, respectively. The licenses authorize the operation of the Brunswick Nuclear Plant in accordance with the conditions specified therein. The facility is located on the Licensee's site in Southport, North Carolina.

II

On March 24, 1993, Mr. Werts was granted unescorted access to the Brunswick Nuclear Plant, based in part on representations he made on an access authorization application, dated March 11, 1993, which he submitted to Power Plant Maintenance, Inc., (PPM), a contractor of the Licensee. In the application, Mr. Werts falsely represented himself as Michael Allen Hunter and stated that he had not been arrested or convicted of any criminal offense. In addition, Mr. Werts failed to correct that information after he was granted unescorted access and continued to hold that status on the basis of his false

identity. The Licensee submitted fingerprint cards completed by Mr. Werts to the Federal Bureau of Investigation (FBI) and subsequently was informed that Mr. Werts (alias Mr. Hunter) had a record of arrests, convictions, and imprisonments prior to 1990.

III

Based on the above, Mr. Werts engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2) which prohibits any employee of a licensee or licensee contractor from deliberately submitting to the licensee or licensee's contractor information the employee knows to be incomplete or inaccurate in some respect material to the NRC. Information concerning an individual's true identity and criminal history is material in that it is used by the Licensee to make determinations relative to the grant or denial of access authorization. If the Licensee had been given accurate information regarding Mr. Werts' criminal record, the Licensee would not have granted unescorted access to Mr. Werts.

The NRC must be able to rely on the Licensee, its contractors, and licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Werts' actions have raised serious concerns as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities can be conducted in compliance with the Commission's requirements

and that the health and safety of the public would be protected if Mr. Werts were permitted at this time to be involved in the performance of licensed activities or were permitted unescorted access to protected or vital areas of NRC-licensed facilities. Therefore, the public health, safety and interest require that Mr. Werts be prohibited from being involved in the performance of activities licensed by the NRC and be prohibited from obtaining unescorted access for a period of three years from the date of this Order. For a period of five years from the date of this Order, Mr. Werts is required to inform the NRC of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a three-year period from the date of this Order, Mr. Rex Allen Werts is prohibited from engaging in activities licensed by the NRC and is prohibited from obtaining unescorted access to protected and vital areas of facilities licensed by the NRC. For the purposes of this Order, licensed activities include the

activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

B. For a five-year period from the date of this Order, Mr. Werts is required to provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities.

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

V

In accordance with 10 CFR 2.202, Mr. Werts must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Werts or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the

Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta St. N.W., Atlanta, Georgia 30323, and to Mr. Werts, if the answer or hearing request is by a person other than Mr. Werts. If a person other than Mr. Werts 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 2.714(d).

If a hearing is requested by Mr. Werts or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Werts, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without

further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James L. Milhoan
James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 12th day of December 1994

SYNOPSIS

On August 20, 1993, the U.S. Nuclear Regulatory Commission (NRC) licensee, Carolina Power and Light Company, submitted a Security Event Report to the NRC regarding an event at the licensee's Brunswick Nuclear Plant (BNP). The event described by the licensee involved an employee of a contractor who was granted unescorted access to the BNP vital and protected areas based on falsified employment and background information. This matter was referred to the NRC Office of Investigations (OI) Region II Field Office on September 1, 1993, for evaluation.

Based on OI review of the documentation and evidence obtained in this investigation, it is concluded that the subject deliberately falsified personal identification and background information to deceive the contractor, PPM, the licensee and the NRC in order to fraudulently obtain employment and unescorted access at the BNP.



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

September 27, 1994

IA 94-024

Larry D. Wicks, President
Western Industrial X-Ray Inspection Company, Inc.
5354 Highway 89 North
Evanston, Wyoming 82931

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because you engaged in deliberate misconduct as defined in 10 CFR 30.10. As described in the Order in more detail, the NRC has concluded that you deliberately failed to send an employee's thermoluminescent dosimeter (TLD) in for processing after you learned of an incident on July 31, 1993; that you deliberately failed to perform an evaluation of this employee's radiation exposure after becoming aware of the incident; that you were not truthful in responding to NRC inspectors and investigators about this incident; and that you deliberately failed to ensure that properly calibrated alarm ratemeters were provided and used by your radiography personnel. A copy of the synopsis of the OI report is enclosed.

The Order prohibits your involvement in NRC-licensed activities for a period of five years from the date of the Order, except as necessary to maintain licensed material in possession of WIX in safe storage or to transfer that material to an authorized recipient. Other than this exception, you are prohibited from any involvement in managing, supervising, or performing activities that are regulated by the NRC, including conducting or supervising radiography activities and acting as a Radiation Safety Officer for an NRC licensee.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

Larry D. Wicks

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Docket No. 030-32190
License No. 49-27356-01
IA 94-024

Enclosures:

1. Order
2. OI synopsis

cc w/enclosures: State of Wyoming

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

LARRY D. WICKS

)
)
)
)

IA 94-024

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Larry D. Wicks is the President and Radiation Safety Officer for Western Industrial X-Ray Inspection Company, Inc. (WIX), Evanston, Wyoming. WIX holds License No. 49-27356-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the licensee to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains suspended while a hearing requested by the licensee is pending.

II

The suspension of License No. 49-27356-01 was based on the results of NRC staff inspections and Office of Investigations (OI) investigations of WIX conducted in April 1993 and in January and March 1994. These inspections and investigations identified numerous violations of NRC's radiation safety requirements, including some violations that were found to have recurred after being identified in previous inspections and some which were found to have been committed deliberately by Mr. Wicks and other employees of WIX. These violations were described in inspection reports 030-32190/93-01 and

030-32190/94-01 issued on May 12, 1994, and were the subject of an enforcement conference held April 1, 1994 in Arlington, Texas, during which Mr. Wicks was given the opportunity to provide additional information concerning each violation. In Investigation Report 4-93-017R, issued August 2, 1993, OI found three deliberate violations and in Report 4-93-049R, issued July 8, 1994, OI found four deliberate violations.

Based on its review of all available information, the NRC concludes that Mr. Wicks violated the provisions of 10 CFR 30.10, which prohibits individuals from deliberately causing a licensee to violate NRC requirements and from deliberately providing materially incomplete or inaccurate information to the NRC or to a licensee of the NRC. Specifically, as discussed below in more detail, the NRC concludes that: 1) Mr. Wicks deliberately failed to send an employee's thermoluminescent dosimeter (TLD) in for immediate processing after he learned of a radiography incident that occurred on July 31, 1993, a violation of 10 CFR 34.33(d); 2) Mr. Wicks deliberately failed to perform an evaluation of the same employee's radiation exposure after becoming aware of the incident, a violation of 10 CFR 20.201; 3) Mr. Wicks deliberately provided inaccurate information to NRC investigators about the July 31, 1993, incident and his follow-up to the incident, a violation of 10 CFR 30.10; and 4) During March, April, and July of 1993 and January 1994, Mr. Wicks deliberately failed to ensure that calibrated alarm ratemeters were provided and used by WIX radiography personnel, a violation of 10 CFR 34.33(f)(4).

The first three violations above are directly related to the July 31, 1993, radiography incident. That incident, which was reported to Mr. Wicks on the

date it occurred, by the two WIX employees who were involved in it, involved a radiation source in a radiographic exposure device not being properly returned to its shielded position before the device was moved by one of the employees. This resulted in the self-reading pocket dosimeter of one of the employees, a radiographer's assistant, going off-scale, indicating that the radiographer's assistant received a radiation exposure beyond the range of the pocket dosimeter.¹ When the pocket dosimeter of someone engaged in radiography is discharged beyond its normal range, NRC regulations in 10 CFR Parts 34 and 20, respectively, require: 1) that the licensee send the individual's TLD in for immediate processing to determine the individual's radiation exposure; and 2) that the licensee perform evaluations as necessary, whether or not a TLD reading is available, to determine the individual's radiation exposure and to ensure compliance with NRC exposure limits. In this case, the NRC concludes that Mr. Wicks deliberately did neither and that he has not been truthful in providing information about this incident to NRC personnel and others.

When the NRC began its investigation of this incident in January 1994, Mr. Wicks had no record of the radiographer's assistant's exposure for the day or month in question. Mr. Wicks stated during the investigation and at the enforcement conference that after learning of the incident he sent all TLDs worn by company personnel during the month of July 1993 in one package to Landauer, Inc., the company that processes TLDs for WIX, and that he included a note requesting immediate processing of the TLD worn by the radiographer's assistant. However, a representative of Landauer, Inc., stated to NRC

¹ Later reenactments of the incident resulted in an estimate that the radiographer's assistant received 6 rems, an exposure in excess of the NRC occupational quarterly limit of 3 rems in effect at the time of the incident.

personnel that while it had received TLDs from WIX for other employees for the month of July 1993, it had no record of receiving a TLD for the radiographer's assistant for that month and no record of receiving a request from Mr. Wicks for expedited processing of any TLDs sent in for that month. In fact, exposure records for the month of July 1993 and quarterly records for the months of July-September 1993 which were mailed by Landauer to WIX and retained by WIX contain no information regarding the radiographer's assistant's exposure for the month of July 1993 (her exposure records for all other months are available).²

Mr. Wicks told NRC investigators that he had never provided an exposure estimate to the radiographer's assistant because he had none to give her, i.e., he did not have a report from Landauer. However, this is inconsistent with statements by: 1) the radiographer's assistant that she persisted in trying to obtain from Mr. Wicks her exposure for the month of July and that Mr. Wicks eventually -- about three weeks after the incident -- told her she had received 350 millirem, 2) the radiographer involved in the incident that Mr. Wicks had informed him that "everything was OK" and that the radiographer's assistant had received 600 millirem for the quarter, and 3) the assistant's husband, also a WIX employee, that Mr. Wicks had called his wife two to three weeks after the incident and had given her a number "which was lower and we were happy."

² Mr. Wicks claims that he was unaware of this fact until the NRC questioned him in January 1994.

Mr. Wicks contended during the enforcement conference that he had been misled by the employees involved in the incident into believing that the incident was not serious. While both employees admit to providing Mr. Wicks false accounts of the incident in an attempt to cover up their own mistakes, the radiographer's assistant and her husband both told NRC investigators that Mr. Wicks was informed when the reports were turned in on July 31, 1993, that the reports were false and that Mr. Wicks was told that the radiographer involved in the incident had been asleep in the truck instead of supervising the radiographer's assistant (as required by NRC regulations). Mr. Wicks denied having been told that the reports were false.

Mr. Wicks also told NRC personnel during the enforcement conference that he did not realize that Landauer had not provided him a July 1993 exposure record for the radiographer's assistant and had not called Landauer until the NRC began its investigation in January 1994. The only explanation Mr. Wicks has offered for not pursuing the question of the radiographer's assistant's July 1993 exposure is that he was very busy. However, the following events raise significant questions about Mr. Wicks' credibility:

1. In August 1993, Mr. Wicks received Landauer's report for the month of July 1993 which, as indicated earlier, contained no monthly exposure record for the radiographer's assistant. Despite, according to Mr. Wicks, having requested immediate processing of the assistant's badge from Landauer, Mr. Wicks told the NRC investigator that he didn't read the monthly report.

2. Mr. Wicks stated at the enforcement conference that he placed the assistant on limited duty as soon as he was informed of the incident pending the receipt of a report from Landauer and that she was limited to working in the darkroom and "completely away from my shooting area" from July 31, 1993, until she left WIX toward the end of September 1993.³ Mr. Wicks stated that having an employee in a restricted status for nearly two months did not remind him of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.
3. On October 1, 1993, Mr. Wicks provided a summary of the radiographer's assistant's radiation exposure history, including the period in question (July 1993), to her new employer, an NRC licensee. In doing so, Mr. Wicks relied not on Landauer records, even though records were available for all months but July and September 1993, but by adding up daily dosimeter records, which were blank for July 31, 1993. Despite making these calculations for the radiographer's assistant, Mr. Wicks stated at the enforcement conference that he was not reminded of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.
4. Later in October 1993, Mr. Wicks responded to a request from the NRC for the radiation exposure reports of terminated employees, as required by

³ The NRC notes that the radiographer's assistant disputes Mr. Wicks' account, stating that she was permitted to resume work involving exposure to radiation about three weeks after the incident when Mr. Wicks called her and told her that her exposure was 350 millirems.

10 CFR 20.408(b). In responding to this request, Mr. Wicks did not provide a report for the radiographer's assistant despite having provided one for her husband, whose termination date occurred five days after hers. Mr. Wicks had not provided the NRC a termination report for the radiographer's assistant when the NRC began its investigation in January 1994.

Moreover, Mr. Wicks is an experienced radiographer and has been trained on the significance of overexposures. Considering that this appears to be the first time that his firm had the potential for an overexposure warranting immediate processing of the assistant's badge and assuming that the badge was sent as he states, then it is not credible that he would not have followed up on it. The NRC also does not consider credible Mr. Wicks' statement that he sent the TLD in for processing. According to Landauer, the incidence of TLDs being lost in delivery is very small. In this case, the loss of the radiographer's assistant's TLD in the mail is not an issue because Mr. Wicks has indicated on a number of occasions that he packaged all WIX TLDs together for shipment to Landauer and Landauer received the package. Landauer representatives have informed the NRC staff that all TLDs are electronically scanned upon receipt, and that Landauer employs the use of a data base to verify that TLDs which are scanned after processing match those which are scanned upon receipt. The process is designed to alert Landauer to situations in which a TLD is lost during processing. Landauer's automated reporting system includes controls to flag any TLD number which was scanned upon receipt and was not scanned again after processing. Lost TLDs are noted on dosimetry reports provided to Landauer customers.

Based on its review of the evidence gathered during its investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Wicks did not send the radiographer's assistant's TLD in for processing; that Mr. Wicks deliberately failed to conduct an evaluation of this individual's radiation exposure from the incident; and that Mr. Wicks deliberately provided false information regarding the incident to the NRC and false information regarding the individual's radiation exposure history to another licensee of the NRC.

In addition, with regard to the NRC's requirement that all radiography personnel be equipped with alarm ratemeters that have been calibrated at periods not to exceed one year, the NRC's investigations found that Mr. Wicks repeatedly failed to ensure that this requirement was met. This violation was first discovered and discussed with Mr. Wicks following an inspection and investigation in April 1993. When the NRC conducted its investigation beginning in January 1994, this same violation was found to have occurred in July 1993, two months after it was first discussed with Mr. Wicks, and again in January 1994 when Mr. Wicks could not produce current calibration records for alarm ratemeters worn by either of two radiography personnel on January 18, 1994. When questioned by NRC investigators, Mr. Wicks provided conflicting statements as to whether he had even supplied ratemeters to his radiographers but he said he understood it was his responsibility to ensure that alarm ratemeters were calibrated. Given the repetitive nature of this violation and Mr. Wicks' knowledge of this requirement, the NRC concludes that Mr. Wicks deliberately caused the licensee to violate this requirement.

III

Based on the above, the NRC staff concludes that Larry D. Wicks, President and Radiation Safety Officer for WIX, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 34.33(d), 34.33(f)(4), and 20.201. It further appears that Mr. Wicks has deliberately provided to NRC personnel and to another licensee of the NRC information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects.

Mr. Wicks' actions in causing the Licensee to be in deliberate violation of radiation safety requirements and his misrepresentations to the NRC have raised serious doubts as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. NRC confidence in Mr. Wicks' conducting NRC-licensed activities safely and in compliance with NRC requirements is further eroded by the fact that he was the President of the company and the Radiation Safety Officer when he engaged in deliberate misconduct. In both of these positions, particularly in his role as the Radiation Safety Officer, Mr. Wicks is relied upon by the NRC to ensure that all radiation safety requirements are met. Conduct of this nature cannot and will not be tolerated by the NRC.

Consequently, I lack 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. Wicks

were permitted at this time to engage in NRC-licensed activities. Therefore, the public health, safety and interest require that Larry D. Wicks be prohibited from engaging in NRC-licensed activities (including any supervising, training, or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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, EFFECTIVE IMMEDIATELY, THAT:

1. Larry Dale Wicks is prohibited for five years from the date of this Order from engaging in NRC-licensed activities, except as provided in item 3, below. 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 by 10 CFR 150.20.

2. The first time Mr. Wicks is employed in NRC-licensed activities following the five-year prohibition, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555 and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Mr. Wicks is committed to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

3. Mr. Wicks is permitted to conduct licensed activities only as necessary to maintain licensed material in the possession of Western Industrial X-Ray Inspection Company in safe storage and transfer the material to an authorized recipient.

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

V

In accordance with 10 CFR 2.202, Mr. Wicks must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this

Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wicks or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Wicks if the answer or hearing request is by a person other than Mr. Wicks. If a person other than Mr. Wicks requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wicks or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wicks, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including

the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 27th day of September 1994

SYNOPSIS

On January 27, 1994, the Nuclear Regulatory Commission, Region IV, Office of Investigations, initiated an investigation to determine whether a radiographer deliberately allowed a radiographer's assistant to work without supervision and whether the licensee deliberately failed to evaluate a potential overexposure incident. During the conduct of the investigation, it was alleged a false report regarding the potential overexposure was deliberately submitted to the licensee by the radiographer and the radiographer's assistant. During the conduct of this investigation, there were additional allegations that the licensee had deliberately failed to provide calibrated alarm ratemeters to radiographers and the licensee's radiographers had deliberately failed to supervise radiographer's assistants.

Evidence developed during the investigation substantiated the allegation that a radiographer deliberately allowed a radiographer's assistant to perform radiographic operations without proper supervision, and the licensee deliberately did not conduct an evaluation of a potential overexposure incident. Additionally, this investigation determined that a radiographer and a radiographer's assistant deliberately prepared and submitted false reports about the potential overexposure incident to the licensee. This investigation further determined that on January 18, 1994, the licensee deliberately failed to provide calibrated alarm ratemeters to a radiographer and radiographer's assistant. This investigation determined that in a separate incident from that previously addressed, there was insufficient evidence to establish that the licensee's radiographers had deliberately failed to supervise radiographer's assistants while conducting radiographic operations.

November 16, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bloch, Chairman

Dr. Jerry Kline

Dr. Charles Kelber

In the Matter of

Docket Nos. 30-32190-EA
30-32190-EA-2

WESTERN INDUSTRIAL X-RAY
INSPECTION CO., INC.

and

LARRY D. WICKS

ASLBP Nos. 94-699-09-EA
95-702-01-EA-2

FINAL INITIAL ORDER
(Approval of Settlement and Dismissal)

Western Industrial X-Ray Inspection Co., Inc. (WIX), Larry D. Wicks, and the Staff of the United States Nuclear Regulatory Commission (Staff) have reached an agreement in settlement of these proceedings, the terms of which agreement are set forth in full in Attachment A, "Stipulation for Settlement of Proceedings." After studying this agreement, the Atomic Safety and Licensing Board had some questions concerning the appropriateness of the settlement. Accordingly, it held a transcribed teleconference, on November 3, 1995, which resolved the Board's questions.

In the course of the teleconference, we became satisfied:

- WIX has an adequate reason for selecting Mr. Heath as Radiation Safety Officer. Though he is not a trained RSO, he has an engineering degree and radiography background and will be required to take appropriate training. Paragraph 5 of the Settlement Agreement provides further assurance by requiring audits of operations. The Staff is satisfied with this arrangement. Tr. 17-19.
- Mr. John Phillips, who has a 1/3 financial interest in the company and is the company lawyer and a local municipal court judge, will take management responsibility. Mr. Larry Wicks will be restricted to a role in sales and business acquisition and as an advisor to Mr. Phillips about commercial practices in the industry. Mr. Wicks will not play any role in employee evaluation. Tr. 20-25, 29-30, 30-32.
- Although Mr. Wicks may be reinstated in WIX after two years upon application to the Staff, this process will not be automatic and will entail Staff discretion. Tr. 25-29, 32-33, 34.

1. ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 15th day of November, 1995, ORDERED, that:

1. The Western Industrial X-Ray Inspection Co., Inc. (WIX) motions to withdraw its requests for hearing are granted. The withdrawn requests for hearing relate to (a) the Staff's Order to WIX of June 16, 1994 ("Order Suspending License (Effective Immediately) and Demand for Information," 59 Fed. Reg. 33027 (June 27, 1994) ("Suspension Order"), dated July 1, 1994, and (b) the Staff's Orders to WIX of September 27, 1994 ("Order to Transfer Material (Effective Immediately) and Order Revoking License" 59 Fed. Reg. 50931 (October 6, 1994) ("Revocation Order")), dated October 14, 1994.

2. WIX is dismissed as a party in the proceedings pertaining to those Orders and to this proceeding.

3. The motion of Larry Wicks to withdraws his request for hearing on the Staff's Order to Mr. Wicks of September 27, 1994 ("Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," 59 Fed. Reg. 50932 (October 6, 1994) ("Prohibition Order")), dated October 14, 1994, is granted.

4. Mr. Wicks is dismissed as a party in the proceeding pertaining to that Order.

5. The "Stipulation for Settlement of Proceedings," contained in Attachment A to this Memorandum and Order is adopted as an Order of this Atomic Safety and Licensing Board.

THE ATOMIC SAFETY AND LICENSING BOARD

Jerry Kline

Dr. Jerry Kline
Administrative Judge

Charles Kelber

Dr. Charles Kelber
Administrative Judge

Peter B. Bloch

Peter B. Bloch
Chairman

Rockville, Maryland

11/2/95

Attachment A¹

STIPULATION FOR SETTLEMENT OF PROCEEDINGS²

THIS AGREEMENT is made by and between Western Industrial X-Ray Inspection Co., Inc. ("WIX" or the Licensee"), Larry D. Wicks ("Wicks") and the Staff of the United States Nuclear Regulatory Commission ("NRC Staff" or "Staff"), to wit:

WHEREAS WIX holds Byproduct Material License No. 49-27356-01 issued by the NRC pursuant to 10 C.F.R. Parts 30 and 34, which license authorizes WIX to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography activities in accordance with the conditions specified therein, and is due to expire on August 31, 1996; and

¹The heading contained in the stipulation of the parties has been omitted as redundant. Page numbers have been changed for consistency with this document.

²In the course of the Teleconference of November 3, the Board admitted two exhibits. Tr. 16. On further consideration, it is not necessary that those exhibits be admitted. This Attachment is sufficient. Accordingly, the two Board exhibits shall not be admitted. This Order and its attachment may be read in conjunction with the official Transcript. No further exhibits are necessary.

WHEREAS Wicks is and has been at all times relevant hereto the principal shareholder, President, and Radiation Safety Officer ("RSO") of WIX, with responsibilities, *inter alia*, involving compliance with NRC requirements for radiation protection; and

WHEREAS on June 16, 1994, the NRC Staff issued an "Order Suspending License (Effective Immediately) and Demand for Information," 59 Fed. Reg. 33027 (June 27, 1994) ("Suspension Order"), based, *inter alia*, upon a finding that WIX had engaged in numerous violations of NRC radiation safety regulatory requirements, including several violations which were found to be of a recurring nature and/or were committed deliberately by Licensee employees, including WIX's President and RSO, in violation of 10 C.F.R. § 30.10; and

WHEREAS the Suspension Order suspended License No. 49-27356-01, pending further order, effective immediately, and also demanded information from the Licensee in order to assist the NRC in determining whether the license should be revoked and whether Wicks should be prohibited from performing NRC-licensed activities; and

WHEREAS on September 27, 1994, the NRC Staff issued (1) further Orders directed to WIX, "Order to Transfer Material (Effective Immediately) and Order Revoking License" 59 Fed. Reg. 50931 (October 6, 1994) ("Revocation Order"); and (2) an Order directed to Wicks, "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immedi-

ately)," 59 Fed. Reg. 50932 (October 6, 1994) ("Prohibition Order"), based, *inter alia*, upon a finding that the NRC lacked adequate assurance that the public health and safety would be protected if WIX retains possession of licensed material, or if licensed activities are conducted by WIX and/or its President and RSO in the future; and

WHEREAS the Revocation Order required the Licensee, *inter alia*, to transfer all NRC-regulated material in its possession to the manufacturer or other person authorized to possess the material and revoked License No. 49-27356-01, effective immediately; and

WHEREAS the Prohibition Order, *inter alia*, prohibited Wicks from engaging in NRC-licensed activities (including any supervising, training or auditing) for either an NRC licensee or Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 C.F.R. § 150.20 for a period of five (5) years from the date of that Order; and

WHEREAS requests for hearing were filed by WIX concerning the Suspension Order and Revocation Order on July 1 and October 14, 1994, respectively, and a request for hearing was filed by Wicks concerning the Prohibition Order on October 14, 1994, in response to which adjudicatory proceedings have been convened and remain pending before an Atomic Safety and Licensing Board ("Licensing Board") at this time; and

WHEREAS the undersigned parties recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of the matters now pending in litigation between them, including, without limitation, the elimination of further litigation expenses, uncertainty and delay, and other tangible and intangible benefits, which the parties recognize and believe to be in the public interest; and

WHEREAS, pursuant to 10 C.F.R. § 2.203, the Staff, WIX and Wicks have stipulated and agreed to the following provisions for settlement of the above-captioned proceedings, subject to the approval of the Licensing Board, before the taking of any testimony or trial or adjudication of any issue of fact or law; and

WHEREAS WIX and Wicks are willing to waive their hearing and appeal rights regarding these matters, in consideration of the terms and provisions of this Stipulation and settlement agreement; and

WHEREAS the terms and provisions of this Stipulation, once approved by the Licensing Board, shall be incorporated by reference into an order, to be issued in accordance with subsections b, I and o of section 161 of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2201, and into License No. 49-27356-01, issued pursuant to section 81 of the Act, 42 U.S.C. § 2111, and shall be subject to

enforcement pursuant to the Commission's regulations and Chapter 18 of the Act, 42 U.S.C. § 2271 et seq.;

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Wicks agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities up to and including June 15, 1999, five years from the date of the NRC "Order Suspending License (Effective Immediately)," dated June 16, 1994. For purposes of this Stipulation and Agreement, the definition of "NRC-licensed activities," as set forth above, is understood to include any and all activities that are conducted pursuant to a specific license issued by the NRC or general license conferred by NRC regulations, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20, but does not include marketing, other business activities or ownership of an interest in WIX.

2. For a period of five years after the above-specified five-year period of prohibition has expired, i.e., from June 16, 1999 through June 15, 2004, Wicks shall, within 20 days of his acceptance of each and any employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined above, provide written notice to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, of the name,

address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities, and a detailed description of his duties and the activities in which he is to be involved.

3. In the first notification provided pursuant to Paragraph 2 above, Wicks shall include a statement of his commitment to compliance with NRC regulatory requirements and an explanation of the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

4. Notwithstanding the above, it is understood that Wicks may request reconsideration of the Prohibition Order after WIX has conducted two (2) years of resumed NRC-licensed activities, however, it is understood that the NRC Staff shall have the sole discretion to determine whether any such reconsideration is warranted, with respect to which determination Wicks hereby waives any right to or opportunity for hearing or appeal before the NRC and/or a court of law.

5. It is hereby agreed by the parties that WIX shall be allowed to resume its conduct of NRC-licensed activities upon approval of this Stipulation and Agreement by the Licensing Board, but it is expressly understood and agreed that Wicks is prohibited from participation in the conduct of any such activities in accordance with Paragraph 1 above. In furtherance of this understanding, WIX and Wicks further agree that License No. 49-27356-01 shall be modified

to include the following requirements, prior to any resumption of NRC-licensed activities, which shall remain in effect up to and including June 15, 1999 or until such other time as may be explicitly stated herein:

(a) WIX (1) shall retain Mr. Ray Heath, or other person approved by the NRC Staff to serve as RSO or successor RSO until at least June 15, 1999, who shall at all times be responsible for performing the duties of an RSO and shall be responsible for maintenance of all NRC-required records; (2) shall establish the minimum number of hours to be devoted to RSO duties; and (3) shall describe the responsibilities and audits to be performed by the RSO under the radiation safety program. WIX shall submit the qualifications of any person it proposes to serve as RSO, other than Mr. Heath, to the NRC Staff for prior approval; the statement of qualifications should demonstrate that the person has not previously been employed by WIX, that he/she is likely to exercise independence from Wicks, and that he/she meets the NRC's minimum criteria established for an RSO.

(b) Prior to restart, Mr. Heath (if he is selected by WIX to serve as RSO) must successfully complete an Industrial Radiography course

of at least 40 hours duration. Within six months of restart, Mr. Heath must successfully complete a Radiography Radiation Safety Officer training course of at least three days duration. Courses selected by the licensee to satisfy this condition must receive prior approval by NRC Region IV.

(c) If Mr. Heath is selected to serve as RSO, WIX shall name an Assistant Radiation Safety Officer to the license. The designated Assistant RSO must have at least five years experience as an industrial radiographer. The assistant RSO shall be readily available to respond to incidents and emergencies and shall be on call by means of a pager, telephone, or radio at all times when radiographic operations are scheduled or in progress.

(d) If Mr. Heath is selected to serve as RSO, the RSO and Assistant RSO shall be identified by name on the license. An Assistant RSO shall be carried on the license until Mr. Heath has gained the appropriate practical radiography training and experience, or a minimum of one year.

(e) The RSO shall have full authority for radiation protection and safety, entirely inde-

pendent from any involvement or interference by Wicks, with full authority to direct all aspects of radiography operations including the authority to shut down operations that are unsafe or which violate the license or NRC requirements. The RSO shall report to the person who is retained pursuant to paragraph 5(g) below, and the RSO shall have the authority to report any concerns directly to the NRC. The RSO shall notify the NRC immediately if Wicks participates or becomes involved in any NRC-licensed activities, or interferes with the RSO's independence in any way.

(f) The RSO shall certify to the NRC Staff in advance of commencing NRC-licensed activities that he/she understands (1) the terms of this Stipulation and Agreement, the license requirements, and the Commission's regulations associated with radiography, (2) that he/she may be held personally accountable for violations of the license or Commission requirements under 10 C.F.R. § 30.10 for deliberate misconduct, (3) that he/she is responsible for making reports required by NRC regulations, and (4) that Wicks is prohibited from having any involvement in NRC-licensed activities, and that the RSO is

required to notify the NRC immediately if Wicks participates or becomes involved in any NRC-licensed activities, or interferes with the RSO's independence in any way.

(g) WIX will retain the services of a person, to be approved in advance by the NRC Staff, to be responsible for management of those aspects of the company's business that could affect the RSO or the conduct of radiation safety-related activities, including the authority (1) to hire and terminate the employment of the RSO or other employees engaged in the conduct of NRC-licensed activities, (2) to make and execute salary and other financial decisions which may affect such persons including the RSO, and/or the safe conduct of NRC-licensed activities, and (3) to have control over financial resources (e.g., through the establishment of an escrow account) sufficient to ensure the safe and proper conduct of NRC-licensed activities. This individual shall also notify the NRC immediately if he/she determines that Wicks is or has been involved in NRC-licensed activities.

(h) Neither Wicks nor any person related to, or in privity with, him shall have any direct or indirect involvement in or exercise control over

NRC-licensed activities, including management, supervision and financial control or participation in hiring and firing decisions which may affect the RSO and/or the safe and proper conduct of NRC-licensed activities. In addition, while Beverly Wicks (Wicks' wife) may continue to serve as WIX' secretary, she shall not participate in or have any involvement in NRC-licensed activities (including, without limitation, such tasks as mailing and receiving film badges or radiation exposure reports, handling or distributing dosimeters, and any other tasks related to radiation safety).

(I) WIX shall retain an outside independent auditor (and any successor auditor), who is to be approved in advance by the NRC Staff based upon a review of the auditor's qualifications. The auditor (and any approved successor) shall submit an audit plan for NRC approval that describes the items to be audited and the methodology to be employed, including the number of field inspections and the percentage of employees engaged in radiography who will be audited in the field. The auditor is to provide copies of all draft and final audit reports to the NRC Staff at the same time that such reports are

provided to WIX. WIX shall provide a written response to the audit findings within 30 days after receipt thereof, including a description of any corrective actions taken or an explanation of why such actions were not taken. The auditor shall perform audits and examinations of the radiation safety program and operations, including the performance of field audits, as follows: An independent program audit will be performed at about three months, and no later than six months, following the resumption by WIX of NRC-licensed activities, with the results of the audit submitted to NRC Region IV for review. Following the initial audit, audits will be performed every six months. One year after restart, the NRC RIV Regional Administrator may consider, at the request of the licensee, relief in the audit requirements based on good cause shown. Further, the timing and scope of such audits shall not be disclosed to WIX or Wicks in advance; and the auditor shall be informed in advance that Wicks is prohibited from participation in any NRC-licensed activities.

(j) Any notification required to be made pursuant to this Paragraph 5 shall be made in writing to the Regional Administrator, NRC Re-

gion IV, 611 Ryan Plaza Drive, Suite 400,
Arlington, TX 76011.

(k) The Regional Administrator, NRC Region IV, may relax or rescind any of the conditions set forth in this Stipulation and Agreement upon a demonstration of good cause, however, it is understood that the Regional Administrator shall have the sole discretion to determine whether any such reconsideration is warranted, with respect to which determination WIX and Wicks hereby waive any right to or opportunity for hearing or appeal before the NRC and/or a court of law.

6. The parties agree that, as an integral part of this Stipulation and upon execution hereof, and subject to the approval of this Stipulation by the Licensing Board, (a) WIX and Wicks will withdraw their July 1 and October 14, 1994 requests for hearing on the Suspension Order, Revocation Order and Prohibition Order, and (b) the parties will file a joint request for dismissal of the proceedings on the Suspension Order, Revocation Order and Prohibition Order, with prejudice, it being understood and agreed that this Stipulation and Agreement resolves all outstanding issues with respect to those Orders, that WIX and Wicks hereby waive their hearing and appeal rights regarding the matters which are the subject of these Orders, and that the Staff will take

no further enforcement or other action against WIX or Wicks in connection with those Orders, subject to the terms of this Stipulation and Agreement.

7. WIX and Wicks hereby agree that a failure on their part to comply with the terms of this Stipulation and Agreement will constitute a material breach of this Agreement, and that any such breach may result in the immediate revocation or suspension of the license, effective immediately, if the NRC Staff, in its sole discretion, determines such action to be appropriate, and may result in further enforcement or other action as the NRC Staff may be determine, in its sole discretion, to be appropriate.

8. It is understood and agreed that nothing contained in this Stipulation and Agreement shall relieve the Licensee from complying with all applicable NRC regulations and requirements. Further, it is understood and agreed that nothing contained in this Agreement shall be deemed to prohibit the NRC Staff from taking enforcement or other action (a) against any entity or person for violation of this Stipulation and Agreement, or (b) against persons other than WIX or Wicks in connection with or related to any of the matters addressed in the Suspension Order, Revocation Order or Prohibition Order, should the Staff determine, in its sole discretion, that it is appropriate to do so.

9. It is understood and agreed that this Stipulation and Agreement is contingent upon prior approval by the

Licensing Board and dismissal of the instant adjudicatory proceedings.

10. This Stipulation and Agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, we set our hand and seal this
2nd day of November, 1995.³

FOR WESTERN INDUSTRIAL X-RAY
INSPECTION CO., INC., and
LARRY D. WICKS:

FOR THE NRC STAFF:

Larry D. Wicks, individually and
as President, Western Industrial
X-Ray Inspection Co., Inc.

Sherwin E. Turk
Counsel for NRC Staff

John C. Phillips
Counsel for Western Industrial
X-Ray inspection Co., Inc.
and Larry D. Wicks

³The signed original was filed with the Board.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LARRY D. WICKS

(EVANSTON, WYOMING)

Docket No.(s) IA-94-024

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing FINAL INITIAL ORDER-LBP-95-22 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
Jerry R. Kline
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel
Mail Stop 0-15 B 18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

John C. Phillips, Esq.
Counsel for Larry D. Wicks
Phillips Law Offices
912 Main Street
Evanston, WY 82931

Dated at Rockville, Md. this
16 day of November 1995


Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20585-0001

September 18, 1995

IA 95-037

Dr. Hung Yu
[Home address deleted from
copies pursuant to 10 CFR 2.790]

Dear Sir:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order.

Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure: As stated

cc:
Madigan Army Medical Center
State of Washington Radiation Control Program

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Dr. Hung Yu

)
)
)

IA 95-037

ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Dr. Hung Yu was employed by the Department of the Army at its Madigan Army Medical Center, Fort Lewis (Tacoma, Washington). Madigan Army Medical Center (Licensee) holds License No. 46-02645-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on May 12, 1960. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

Dr. Yu was employed by the Licensee from approximately October 1993 to August 2, 1995, as a medical physicist. During his employment with the Licensee, Dr. Yu reported to the Chief, Radiation Therapy Service, and was responsible for supervising a radiation dosimetrist. Among other tasks, Dr. Yu was responsible for all dosimetry, including developing treatment plans, evaluating the adequacy and accuracy of the treatment plan for each brachytherapy treatment, and modifying treatment plans as required by authorized users. Dr. Yu was also responsible for performing the duties of a radiation therapy dosimetrist, as needed, and directing all physics aspects of intracavitary and interstitial implants. The latter responsibilities included ordering and accepting or receiving brachytherapy sources, source preparation and related quality assurance tasks, and computer calculations, including providing calibration and decay factors for brachytherapy sources. In his

role as a medical physicist who supervised a dosimetrist, Dr. Yu was additionally responsible for ensuring that the dosimetrist's activities were also in compliance with NRC regulations and the Licensee's procedures and Quality Management Program.

II

On June 2, 1995, the Licensee notified the NRC of a misadministration which occurred on May 10, 1995, but had gone unrecognized by the Licensee until June 2, 1995. This finding prompted a review by the Licensee which identified additional misadministrations. On June 8, 1995, the Licensee reported three misadministrations which occurred on February 9 and August 23, 1994, and January 11, 1995. On June 12, 1995, an additional misadministration was reported to have occurred on February 3, 1995. The misadministrations all involved brachytherapy implants using iridium-192 sealed sources, and each treatment was performed in accordance with a treatment plan developed by Dr. Yu or under his direction.

The NRC began an inspection of the events on June 6, 1995. An investigation by the NRC's Office of Investigations (OI) was initiated on June 13, 1995. Both the NRC inspection and NRC investigation are ongoing. The Licensee initiated an internal investigation of the misadministrations and related issues on June 2, 1995, and provided the NRC with a written report of its investigation on August 22, 1995. The NRC inspection and investigation demonstrate that the cause of the misadministrations was an input error of one parameter used by the computerized treatment planning system to calculate dose

rates for treatment plans. Specifically, Dr. Yu had instructed the dosimetrist to use a value, for a "calibration factor" used by the system to calculate dose rates, which was not calculated according to the computer system manufacturer's instructions.

NRC's interviews of Dr. Yu and other Licensee personnel establish that on June 2, 1995, Dr. Yu engaged in deliberate misconduct in violation of 10 CFR § 30.10(a)(2) by deliberately providing inaccurate information to the Licensee on a matter material to the NRC, specifically the dose calculation error that caused the May 10, 1995 misadministration. In response to repeated questions on June 2, 1995, by the Radiation Safety Officer (RSO), and in the presence of the authorized user (also the Chief, Radiation Therapy Service), regarding the cause of the May 10, 1995 misadministration, Dr. Yu stated that it was a "computer error," that "it was hardware error," and that it was a "software error." Dr. Yu's statements to the Licensee were deliberately inaccurate because on May 16, 1995, Dr. Yu was made aware by the computer system manufacturer that his data entry error (i.e., input error) to the treatment planning system was the cause for the dose calculation errors and, immediately after being informed of his error, Dr. Yu began to correctly enter the calibration factor. Only after the RSO stated that he had discussed the treatment plan calculations with the dosimetrist did Dr. Yu explain that the cause of the misadministration was his use of an erroneous input parameter. Dr. Yu's provision of inaccurate information to the RSO and Chief, Radiation Therapy Service, regarding the cause of the dose calculation error associated with the May 10, 1995 misadministration interfered with the Licensee's

investigation required by 10 CFR 35.21(b)(1) of potential misadministrations.

Furthermore, in violation of 10 CFR 30.10(a)(1), Dr. Yu engaged in deliberate misconduct which caused the Licensee to be in violation of NRC requirements including: (1) 10 CFR 20.1906(b), which requires, in part, that upon receipt of labelled packages containing brachytherapy sources, the packages be tested for contamination; (2) 10 CFR 20.2103(a), which requires, in part, that each licensee maintain records showing the results of surveys required by 10 CFR 20.1906(b); and (3) 10 CFR 30.9 which requires, in part, that information required to be maintained by the Commission's regulations shall be complete and accurate in all material respects. For example, Dr. Yu, when questioned about the package survey results of August 19, 1994, admitted to an NRC inspector and OI investigator that he had failed to perform NRC-required package receipt surveys for radioactive contamination and that he had deliberately completed Licensee records to falsely reflect that the contamination surveys had been performed. Dr. Yu stated that, although he was aware of the NRC requirement to perform the survey, he did not believe that the survey was important, that it was just a requirement and a formality and, therefore, he just recorded that the survey had been conducted.

III

Although the NRC investigation is continuing, based on the information developed to date, the NRC concludes that Dr. Yu engaged in deliberate misconduct: (1) in violation of 10 CFR 30.10(a)(2), by knowingly providing to the Licensee on June 2, 1995, inaccurate information relating to a matter

material to the NRC, specifically the cause of the error that resulted in the misadministration; and (2) in violation of 10 CFR 30.10(a)(1), which caused the Licensee to be in violation of NRC requirements, including 10 CFR 20.1906(b), 10 CFR 20.2103(a), and 10 CFR 30.9(a), by deliberately failing to conduct surveys of labelled packages containing brachytherapy sources and deliberately making entries to Licensee records to show that he had conducted such surveys.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects.

Dr. Yu's actions in causing the Licensee to violate NRC requirements and his misrepresentations to the Licensee have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees. Further, Dr. Yu has demonstrated an unwillingness to comply with NRC requirements necessary for the protection of the health and safety of personnel and patients affected by the areas of his responsibility. Dr. Yu's deliberate false statements to Licensee officials concerning radiological exposure to patients and his deliberate violation of NRC requirements is not acceptable conduct for a person engaged in NRC-licensed activities.

Consequently, I lack 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 would be protected if Dr. Yu were permitted at this time to be involved in any NRC-licensed activities.

Therefore, the public health, safety and interest require, pending completion of the investigation and further action by the NRC, that Dr. Yu be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Pending further investigation and order by the NRC, Hung Yu, Ph.D. is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: 1) an NRC licensee, 2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and 3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. Yu of good cause.

In accordance with 10 CFR 2.202, Hung Yu, Ph.D. must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. 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, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Hung Yu, Ph.D. or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, Suite 400, 611 Ryan Plaza, Arlington, Texas 76011, and to Hung Yu, Ph.D., if the answer or hearing request is by a person other than Hung Yu, Ph.D. If a person other than Hung Yu, Ph.D. requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Hung Yu, Ph.D. or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Hung Yu, Ph.D., or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 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



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 18th day of September 1995



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

June 27, 1995

IA 95-022

Marc W. Zuverink
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC (OI REPORT NO. 3-94-061)

Dear Mr. Zuverink:

The enclosed Order is being issued as a result of an investigation by the NRC Office of Investigations (OI) which found that you stole NRC-licensed material, hydrogen-3 (tritium), from the facility of Cammenga Associates, Holland, Michigan, and that you gave the material to members of the public. In doing so, you deliberately acquired, possessed, and transferred NRC-licensed material without an NRC license and needlessly exposed members of the public to radiation. The violation is fully described in the enclosed Order.

The Order prohibits your involvement in NRC-licensed activities for a period of ten years from the date of the Order. In addition, for a period of five years after the ten year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in 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 is subject to criminal prosecution as set forth in that section.

You are required to respond to this Order and should follow the instructions specified in Section VI of the Order when preparing your response. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and the enclosure will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy information or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Marc W. Zuverink

- 2 -

The responses directed by this letter and the enclosed Order are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Action of 1980, Public Law No. 96-511.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Docket No. 030-33009
License No. 21-26460-01

Enclosure:
Order Prohibiting Involvement in NRC
Licensed Activities

cc w/enclosure:
Edith A. Landman
Assistant U.S. Attorney
Michael P. McDonald
Attorney for Mr. Zuverink
Cammenga Associates, Inc.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of) IA 95-022
)
MARC W. ZUVERINK)
Holland, Michigan)

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC

I

Cammenga Associates, Inc. (Cammenga or Licensee) holds Byproduct Material License No. 21-26460-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on September 27, 1993. The license authorizes the use of byproduct material, hydrogen-3 (tritium), in sealed vials for the production of tritium radioluminescent devices. The license is due to expire on January 31, 1998. From July 29, 1994, to September 16, 1994, Marc W. Zuverink was contracted to Cammenga through a temporary hiring service.

II

The Licensee trained Mr. Zuverink as a radiation worker. The training included a discussion of potential sanctions against employees who misused, mishandled, or stole radioactive material. Mr. Zuverink's answers on a comprehensive written exam given by the Licensee indicate that he was aware of potential civil and criminal penalties for employees who deliberately violate federal regulations or license requirements governing the use of tritium. The radiation safety training allowed Mr. Zuverink to enter the Licensee's restricted area and to have access to licensed material as part of the process

of manufacturing tritium illuminated compasses under contract to the United States military.

III

On September 30, 1994, the Licensee undertook an inventory of NRC-licensed material in its possession. Upon completion, the inventory determined that 1099 vials, containing a total of 49.11 curies of tritium, were missing. The Licensee notified the NRC and the Ottawa County, Michigan, Sheriff's Department. An inspection was conducted by NRC Region III personnel on October 7 and 8, 1994, to evaluate the radiological consequences of the missing material and to monitor the retrieval of the tritium sources. Investigations were conducted by the NRC Office of Investigations (OI), the Ottawa County Sheriff's Department, and the Department of Defense Criminal Investigation Service.

Mr. Zuverink admitted to the investigators that he took tritium vials and completed compasses with tritium inserts from the Licensee on more than one occasion. The largest theft apparently took place on September 10, 1994, when he took nine bags of vials from the Licensee, each bag containing 100 vials of tritium, 50 millicuries per vial. Mr. Zuverink stated that he gave the tritium vials and compasses to various members of the public, including approximately 100 vials (5,000 millicuries) to a teenage skateboarder whom he did not know. Mr. Zuverink also admitted that he crushed a tritium vial on a kitchen table at his home in the presence of another individual. This action contaminated the tabletop and caused the other individual to receive a minor

tritium uptake (internal tritium contamination). Minor contamination of a countertop and tables was also found in a restaurant where Mr. Zuverink had given one or more vials to another member of the public. Mr. Zuverink was able to arrange for the return of 548 tritium vials, leaving 551 vials unaccounted for (401 vials at 50 millicuries, 57 vials at 25 millicuries, and 93 vials at 5 millicuries).

OI also found that Mr. Zuverink made false statements to an OI investigator and an NRC inspector during an interview on October 7, 1994. During that interview, Mr. Zuverink stated that he never had any tritium vials at his home, had given tritium vials to only two individuals, and had stolen only one compass. These statements were contradicted by Mr. Zuverink's sworn testimony on October 17, 1994.

Mr. Zuverink's acquisition, possession and transfer of NRC-licensed material, tritium, is a deliberate violation of 10 CFR 30.3, "Activities requiring license." 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. Mr. Zuverink was not authorized in a specific or general license to acquire, possess or transfer byproduct material, including tritium.

Pursuant to a plea arrangement dated February 3, 1995, Mr. Zuverink agreed to plead guilty in the U. S. District Court for the Western District of Michigan to one criminal count of violating 18 U.S.C. 641, a misdemeanor. Specifically, the agreement describes the charge as stealing compasses,

containing the radioactive substance tritium, which belonged to the United States and which were manufactured under contract for the United States. As a result, on April 18, 1995, a judgment was entered whereby Mr. Zuverink was sentenced to serve one year in federal custody, pay a fine of \$500, make restitution to Cammenga in the amount of \$1,000, and pay a \$25 special assessment to the court.

IV

Based on the above, the NRC concludes that Marc W. Zuverink engaged in deliberate misconduct that constituted a violation of 10 CFR 30.3 when he stole and transferred NRC-licensed material. The NRC must be able to rely on its licensees, and the employees of licensees and licensee contractors, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or distributed without a specific or general license. The deliberate violation of 10 CFR 30.3 by Marc W. Zuverink, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Marc W. Zuverink will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Marc W. Zuverink were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of ten years from the date of this Order, Marc W. Zuverink be prohibited from any involvement in NRC-licensed activities for either: (1) an

NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for a period of five years commencing after the ten year period of prohibition, Mr. Zuverink must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Zuverink's compliance with the Commission's requirements and his understanding of his commitment to compliance.

V

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, 10 CFR Part 30, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Marc W. Zuverink is prohibited for a period of ten years from the date of this Order from 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. For a period of five years, after the above ten year period of prohibition has expired, Marc W. Zuverink shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20055, and to the Regional Administrator, NRC Region III, 801

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20055, and to the Regional Administrator, NRC Region III,

801 Warrenville Road, Lisle, Illinois 60632-4531, if the answer or hearing request is by a person other than Mr. Zuverink. If a person other than Mr. Zuverink requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Zuverink or 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 Order should be sustained. Since Mr. Zuverink is currently in Federal custody, if a hearing is requested, the Commission will not act on the hearing request until Mr. Zuverink is released from Federal custody. If Mr. Zuverink requests a hearing, the hearing request will not be granted unless Mr. Zuverink: (1) notifies the Secretary, U.S. Nuclear Regulatory Commission, at the address given above, within 20 days of his release from Federal custody, that he has been released from Federal custody; and (2) provides in the notice his then-current address where he can be contacted and a statement that he continues to desire the hearing. A copy of the notice shall also be sent to the Director, Office of Enforcement, and the Assistant General Counsel for Hearings and Enforcement, at the address given above.

In the absence of any request for hearing, the provisions specified in Section V above shall be effective and final 45 days from the date of this Order without further order or proceedings. In the event that Mr. Zuverink makes the sole request for a hearing and fails to comply with the notification

- 8 -

requirements above, the provisions specified in Section V above shall be effective and final 20 days after he is released from Federal custody.

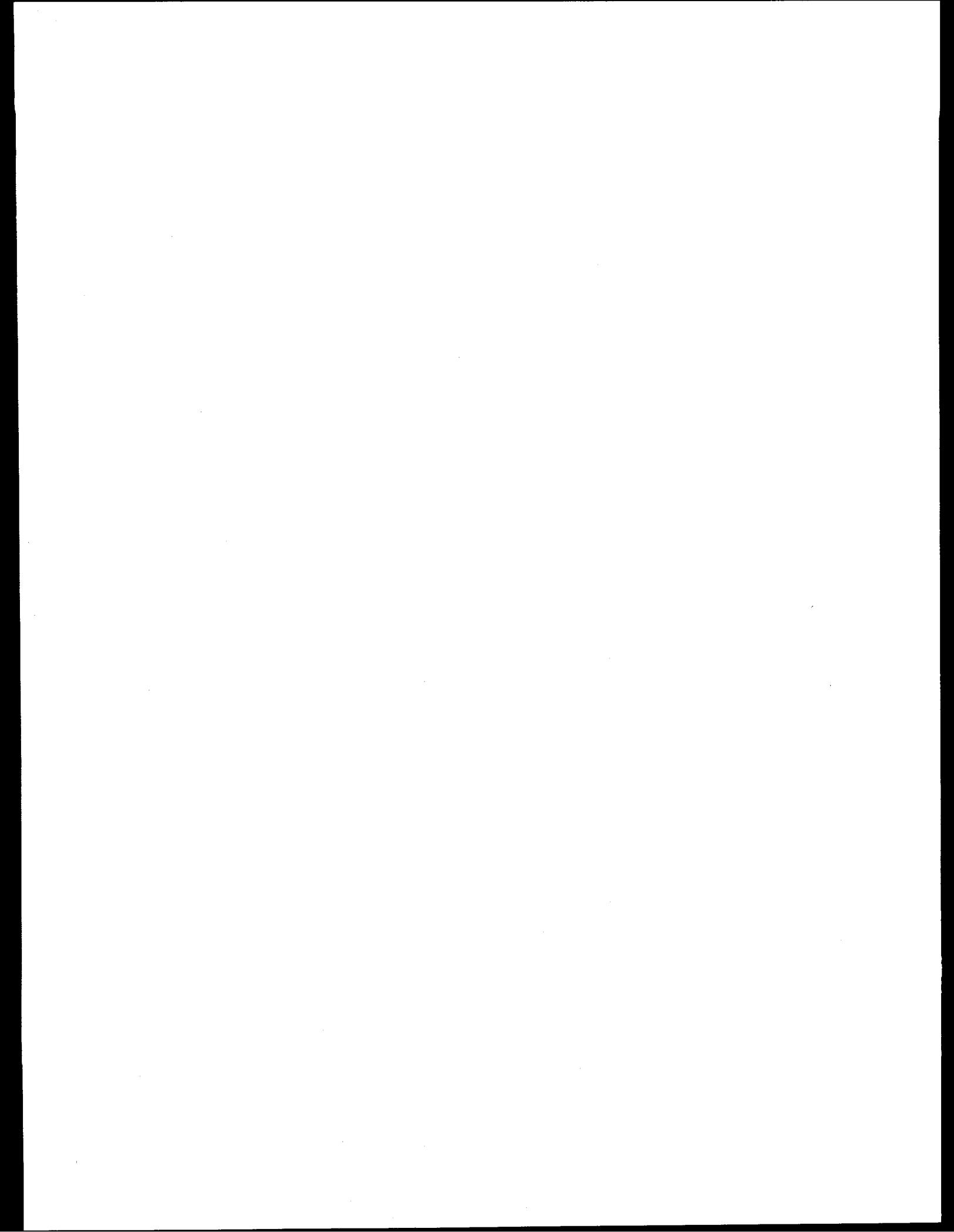
FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 27th day June 1995

B- NOTICE OF VIOLATIONS





UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

IA 95-038

September 28, 1995

Jose Barba, M.D.
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(NRC OI INVESTIGATION REPORT NO. 1-92-056R)

Dear Dr. Barba:

On July 18, 1995, the NRC conducted a predecisional enforcement conference with you in the Region I office in King of Prussia, Pennsylvania, to discuss the circumstances associated with your potential discrimination against an oncology technician. The conference was based on the finding of an NRC investigation by the Office of Investigations (OI) which concluded that you took action that involved discrimination against the technician who was engaged in protected activities on August 25, 1992. A copy of the OI synopsis of the investigation was forwarded to your employer, Hospital Center at Orange, on July 3, 1995.

Based on the information developed during the investigation and the information that you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. Specifically, on August 25, 1992, the technician, during a discussion with an NRC inspector, provided information regarding an event that occurred in January 1991, as requested by the inspector. On October 2, 1992, you sent a letter addressed to the Chairman of Radiology. The letter stated that you were displeased with the oncology technician's performance and that the technician takes every opportunity to discredit you and "bad mouth" the department, just as she did when the NRC inspector came for a surprise visit on August 25, 1992. You indicated that the technician volunteered information such as the January 1991 violation prompting the inspector to see a copy of the citation that neither the technician nor the physicist could produce without asking the Radiation Safety Officer's office for help. On October 5, 1992, you provided a copy of the October 2, 1992 letter to the technician while the Administrative Director of Radiology and Oncology was present.

During the conference, NRC staff asked you what your intent was for the statement in your October 2, 1992 letter, and what was the basis for the statement. You stated that "it was just an example of her continued insubordination." The staff asked whether it is your philosophy that raising safety issues is an example of insubordination. You responded "no," noting that she was free to have discussions with the inspector. Also, during the conference, you stated that you did not consider volunteering information to the NRC as disloyalty, yet, you did not articulate what your intent was in making the statement that appears in the October 2, 1992 letter. In view of the above, the NRC considers that your letter of October 2, 1992, constituted discrimination against an employee for providing the NRC with information regarding a violation of NRC requirements.

Your actions with respect to the October 2, 1992 letter caused the Hospital Center at Orange to violate 10 CFR 30.7. You sent the letter to the Chairman of Radiology and, in addition, the Administrative Director of Radiology and Oncology was present when the letter was given to the technician. Actions which were taken on your part were deliberate and caused the licensee to violate 10 CFR 30.7 and, therefore, constitute a violation of 10 CFR 30.10. Since you were and are a first line supervisor, the violation is classified at Severity Level III in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (60 FR 34381; June 30, 1995).

As a first line supervisor overseeing the use of a cobalt-60 teletherapy unit, you were responsible for not only the safe operation of the unit but also for assuring that members of your staff feel free to discuss safety concerns with licensee management and the NRC. Your actions in October 1992 did not adhere to these standards, and did not provide an appropriate example for those individuals under your supervision, or hospital management with whom you interfaced. Rather, your actions in this matter contributed to the creation of a potential chilling effect for other personnel. 10 CFR 19.15(b) of the Commission's regulations states, in part, that during the course of an inspection, any worker may bring privately to the attention of an inspector, either orally or in writing, any past or present condition that he or she has reason to believe may have contributed to or caused any violation of the act, the regulations in this chapter, or license condition.

Given the significance of your actions, I have decided, after consultation with the Director, Office of Enforcement, to issue to you the enclosed Notice of Violation. I also gave serious consideration as to whether an Order should be issued that would preclude you from any further involvement in NRC-licensed activities for a certain period. However, I have decided, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, that under the circumstances of this case, the enclosed Notice of Violation is sufficient.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you will comply with NRC requirements and not discriminate against licensee employees engaged in protected activities, such as raising safety concerns with the NRC or Licensee, in the future. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

You should be aware that any similar conduct on your part in the future could result in more significant enforcement action against you, including an order removing you from NRC-licensed activities or subjecting you to criminal sanctions.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure and your response will be placed in the NRC Public Document Room with your address deleted. To the extent possible, your response should not include any personal, privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. A copy also is being provided to the Senior Vice President for Operations for the Hospital Center at Orange. A copy of the Notice of Violation and Proposed Imposition of Civil Penalty issued to the hospital on this date also is enclosed.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,



Thomas T. Martin
Regional Administrator

Enclosures:

1. Notice of Violation
2. Notice of Violation and Proposed Imposition of Civil Penalty Issued to the Hospital Center at Orange

cc w/encls:

Paul Mertz, Senior Vice President for Operations, Hospital Center
at Orange
State of New Jersey

ENCLOSURE 1

NOTICE OF VIOLATION

Dr. Jose Barba

IA 95-038

During an NRC investigation by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (60 FR 34381; June 30, 1995), the violation is listed below:

10 CFR 30.10, in part, prohibits any licensee or any employee of a licensee from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

10 CFR 30.7(a) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. The protected activities include an employee's providing the Commission or his or her employer information about alleged violations.

Contrary to the above, in October 1992, Dr. Jose Barba engaged in deliberate misconduct that caused his employer, the Hospital Center at Orange (Licensee) to be in violation of 10 CFR 30.7. Specifically, on October 5, 1992, Dr. Barba presented an oncology technician (who was employed by the Licensee) a letter which he had signed on October 2, 1992, and sent to the Administrative Director of Radiology and Oncology as well as the Chairman of Radiology, criticizing the technician for having discredited him and the department by providing information regarding an earlier violation to an NRC inspector in August 1992.

This is a Severity Level III Violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of this letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that will be taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued

as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U. S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at King of Prussia, Pennsylvania
this 28th day of September 1995



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

IA 95-030

August 7, 1995

Russell Hamilton
[HOME ADDRESS DELETED
10 CFR 2.790(A)]

SUBJECT: NOTICE OF VIOLATION
(NRC Investigation Report No. 3-93-014R)

Dear Mr. Hamilton:

This refers to the investigation conducted by the NRC Office of Investigations (OI) between November 1993 and October 1994 to review possible deliberate violations of NRC requirements while you were employed as a radiographer's assistant by Mid American Inspection Services, Inc. The OI investigation found that from October 1992 to April 1993, at a gas line project near Kalkaska, Michigan, you deliberately conducted radiographic operations without the presence of a radiographer and conducted radiographic operations without wearing proper dosimetry. The synopsis of the OI report was mailed to you on April 12, 1995, and on April 18, 1995, you were contacted by the NRC Region III staff to schedule an enforcement conference. On May 1, 1995, you declined the opportunity for an enforcement conference.

Based on the information developed during the investigation, the NRC has determined that your actions constitute deliberate violations of 10 CFR 34.44, "Supervision of radiographers' assistants" and 10 CFR 30.10, "Deliberate misconduct." The violations are cited in the enclosed Notice of Violation (Enclosure 1). The first violation represents the conduct of NRC-licensed activities by a technically unqualified individual. The second violation is for your deliberate failures to wear a film badge while conducting radiographic operations. These violations are categorized as a Severity Level III problem in accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) (60 FR 34381, June 30, 1995). Enclosure 2 is a copy of a Notice of Violation that is being issued to Mid American Inspection Services, Inc.

You should be aware of the seriousness with which the NRC views deliberate violations of its requirements. The public health, safety and trust demand that individuals who use NRC-licensed materials (e.g., an industrial radiographer's assistant such as yourself) must comply with all applicable NRC requirements. You did not do so in this case. You should be aware that future deliberate misconduct on your part may result in more severe civil enforcement action or criminal sanctions against you.

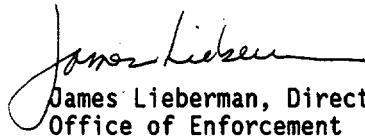
Questions concerning this letter and the enclosed Notice may be addressed to Mr. James Lieberman, Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Lieberman can be reached at telephone number (301) 415-2741.

You are required to respond to this letter within 30 days and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. You should also include your reasons as to why the NRC should have confidence that you would comply fully with NRC requirements should you become involved in NRC-licensed activities in the future. After reviewing your response to this Notice, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure, with your home address removed, will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

The enclosed Notice is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,



James Lieberman
Office of Enforcement

Enclosures:

1. Notice of Violation
2. Notice of Violation to
Mid American Inspection
Services, Inc.

cc w/enclosures:
John E. Hart, Esq.

cc w/Enclosure 1 only:
Mid American Inspection
Services, Inc.

NOTICE OF VIOLATION

Russell Hamilton

IA 95-030

During an NRC investigation concluded on October 19, 1994, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (60 FR 34381, June 30, 1995), the violations are listed below:

A. 10 CFR 30.10 states, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or constitutes a violation of a procedure of a licensee.

10 CFR 34.2 states that a *radiographer's assistant* means any individual who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, during the period from October 1992 to April 1993, while employed as a radiographer's assistant, you deliberately used radiographic exposure devices, while you were not under the personal supervision of a radiographer, in that the radiographer was not present during, or was not watching your performance of operations, including the exposure of the source. (01013)

B. 10 CFR 34.33(a) requires that the licensee not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct-reading pocket dosimeter, an alarming ratemeter, and either a film badge or a thermoluminescent dosimeter.

Notice of Violation

Contrary to the above, on various occasions during the period from October 1992 to April 1993, while employed as a radiographer's assistant, you deliberately did not wear either a film badge or thermoluminescent dosimeter while conducting radiographic operations. (02013)

This is a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Russell Hamilton is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois, 60632-4531 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Rockville, Maryland
This 7th day of August 1995



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

October 10, 1995

IA 95-041

Mr. Roy G. Newholm
[PURSUANT TO 10 CFR 2.790
HOME ADDRESS IS BEING WITHHELD]

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION 4-93-001R)

Dear Mr. Newholm:

This refers to an NRC investigation of Power Systems Energy Services, Inc., (PSESI), a former subsidiary of ABB CE Nuclear Operations, into an allegation that PSESI was falsifying screening certification letters and issuing these letters to NRC licensees in an attempt to gain authorized access for individuals whose background screening had not been completed in accordance with NRC requirements. 10 CFR 50.5 prohibits any employee of a licensee or a contractor for a licensee from engaging in deliberate misconduct that causes an NRC licensee to be in violation of an NRC requirement.

The results of the investigation indicate that PSESI's access screening program was not conducted in accordance with NRC requirements and contracts between nuclear power reactor licensees and PSESI. Specifically, some screening certification letters were issued to licensees attesting to the acceptability of individuals for unescorted access before all actions associated with the required screening were completed as required by 10 CFR 73.56 and contracts with PSESI. Also, in some cases, after the required actions were completed, documents were deliberately backdated to create the appearance of properly performed screening and legitimately issued screening certification letters.

Between July 1991 and April 1992, as the manager of Support Services for PSESI, you were responsible for the overall management of PSESI's security department and you directed the activities of a security department supervisor and a number of investigators. The security department was responsible for conducting access screening required by 10 CFR 73.56 on contractor employees who required unescorted access to certain nuclear power reactors. The screening was to be conducted in accordance with the contracts between the licensees and PSESI. The contracts authorized PSESI to perform portions of licensee screening programs, in accordance with 10 CFR 73.56, as specified in licensee security plans. The security department was also responsible for providing or certifying screening results to the licensees in accordance with their contracts.

On July 1, 1993, during an interview with NRC investigators, you acknowledged that you were involved in records falsification. Specifically, you acknowledged that you told a security department supervisor that if an individual was needed on a job and references had not been developed, the certification letter to the licensee should be issued and the references

individual was needed on a job and references had not been developed, the certification letter to the licensee should be issued and the references should be obtained when possible. You also acknowledged that you knew at the time that you were not complying with contract requirements for issuing the certification letters. Therefore, the NRC has concluded that your deliberate misconduct caused NRC licensees to be in violation of NRC requirements.

The NRC has concluded that this is a violation of 10 CFR 50.5. In accordance with the NRC Enforcement Policy, NUREG-1600 (60 FR 34380, June 30, 1995), this is classified as a Severity Level II violation as it constitutes a very significant regulatory concern. After consultation with the Director, Office of Enforcement and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, the enclosed Notice of Violation (Notice) is being issued to you.

You should note that the NRC considered issuing an order suspending you from NRC-licensed activities for a period of time, but decided that such an order was not necessary because you cooperated with the OI investigation, admitted your involvement, and were forthcoming with information. However, it is important that you be aware of the seriousness with which the NRC views your actions. Public health and safety require that licensee contractors and subcontractors assure compliance with NRC regulations. Your actions caused licensees to be in violation of regulations and undermined the trust that is necessary to maintain a high degree of confidence in the safe operation of nuclear activities. In the future, should there be evidence of a recurrence of this manner of conduct on your part, you may be subject to further enforcement action, possibly including removal from activities associated with NRC-licensed activities.

We have decided an enforcement conference is not necessary because you have already met with the NRC resulting in a transcribed interview concerning your misconduct described in the previous paragraphs. However, you are required to reply to this letter and should follow the instructions specified in the enclosed Notice of Violation (Notice) when preparing your response. Your response should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, the Commission needs additional information to determine whether enforcement action should be taken against you to ensure future compliance with NRC requirements. Please inform us of your current position, duties, and responsibilities at Octagon, Inc., or with any other employer, if those duties and responsibilities are related to NRC-licensed activities. This information can be submitted with the response to the enclosed Notice. You may respond to this demand for information by filing a written answer under oath or affirmation or by setting forth your reasons why this demand for information should not have been issued if the requested information is not being provided.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR) with your address removed. The response required by this

Roy G. Newholm

- 3 -

letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L No. 96-511.

Sincerely,



Frank P. Gillespie, Director
Division of Inspection and Support Programs
Office of Nuclear Reactor Regulation

Enclosures: 1. Notice of Violation
2. Letter to PSEI
3. 10 CFR 50.5
4. Synopsis of OI Report
5. Letter to ABB CE

cc w/o enclosures 1 and 2: See Next Page

NOTICE OF VIOLATION

Mr. Roy G. Newholm

IA-95-041

As a result of an NRC investigation (OI No. 4-93-001R) conducted at Power Systems Energy Services, Incorporated (PSESI), a former subsidiary of ABB CE Nuclear Operations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (60 FR 34380, June 30, 1995), the violation is set forth below:

10 CFR 73.56 requires each licensee to implement an access authorization program to assure that individuals granted unescorted access to their facilities are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. Further, the licensee may accept an access authorization program used by its contractors or vendors for their employees provided it meets the requirements of this section.

10 CFR 50.5 prohibits any employee of a contractor of any licensee from knowingly engaging in deliberate misconduct that causes a licensee to be in violation of any rule or regulation.

Contrary to the above, between July 1991 and April 1992, Mr. Roy Newholm, then manager of Support Services for PSESI, engaged in deliberate misconduct that caused a number of licensees to be in violation of NRC requirements. Specifically, while Mr. Newholm was a manager at PSESI, he told a security department supervisor that, if an individual was needed on a job and the references, which were needed to meet the requirements of 10 CFR 73.56 regarding access authorization, had not been developed, certification letters were to be issued to the licensee attesting to the completion of all NRC requirements and the missing reference information should be obtained when possible. Mr. Newholm knew at the time that his instructions did not comply with licensee contract requirements for issuing certification letters. Subsequently, the supervisor followed Mr. Newholm's instruction and, by doing so, placed a number of licensees in violation of NRC access authorization requirements. (01012)

This is a Severity Level II violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. Newholm is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Director, Office of Nuclear Reactor Regulation at the same address, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). The reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. The response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within

Notice of Violation

- 2 -

the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Dated at Rockville, Maryland
this day of October 1995.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351
October 18, 1995

1 A 95-044

Mr. John E. Rice
2223 West Dora Street, Apt. 202
Mesa, Arizona

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-94-053R)

Dear Mr. Rice:

This letter refers to the investigation conducted by the NRC Office of Investigations (OI) which was completed on July 6, 1995. The investigation concerned possible deliberate misconduct regarding your falsification of employment history information at the Phillips Reliance Mechanical Company and at the Palo Verde Nuclear Generating Plant.

The OI investigation determined that you were employed in March of 1989 by JRS Builders, Inc., as a carpenter/framer but you were fired on May 23, 1989 for improper use of a credit card and wrecking a company vehicle. It also appears that you subsequently falsified, by omission, employment applications for unescorted access at Phillips Reliance Mechanical Company on December 28, 1992 and at Palo Verde on September 30, 1993 by deliberately failing to include information concerning your employment at JRS Builders. OI concluded in its investigation that you deliberately falsified, through omission of material facts, your unescorted access background investigation employment history. A copy of the OI synopsis is enclosed.

Information concerning your employment history is material to the determination the licensee must make in order to satisfy the regulatory requirements in 10 CFR 73.55(b)(2) in granting unescorted access. This regulatory requirement states that the unescorted access authorization program includes a background investigation designed to identify past actions which are indicative of an individual's future reliability within a protected or vital area of a nuclear power reactor. Your deliberate submittal of information that you knew to be incomplete or inaccurate in some respect material to the NRC is a violation of 10 CFR 50.5.

After consultation with the Director, Office of Enforcement and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, I have decided to issue the enclosed Notice of Violation (Notice) for a violation of 10 CFR 50.5 (a copy of this NRC regulation is enclosed) for your deliberate misconduct while you were engaged in licensed activities at the Phillips Reliance Mechanical Company and at the Palo Verde Nuclear Generating Plant. In not taking more significant action against you, we considered, among other things, the fact that your employment with Phillips Reliance, and therefore also Palo Verde, has already been terminated.

John E. Rice

- 2 -

You should be aware of the seriousness with which the NRC views your actions. The public health, safety, and trust demand that nuclear power plant personnel conduct themselves with integrity at all times. You did not conduct yourself in this manner in this case. Future violations of NRC requirements may result in more significant enforcement action, possibly including removal from NRC licensed activities.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me in writing and under oath or affirmation within 30 days of the date of this letter at U. S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, IL 60532.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed, and your response, if you choose to submit one, will be placed in the PDR after 45 days unless you provide sufficient basis to withdraw this letter.

Questions concerning this Notice may be addressed to Bruce Burgess of my staff at (708) 829-9666.

Sincerely,



Hubert J. Miller
Regional Administrator

Enclosures:

1. Notice of Violation
2. OI Synopsis
3. Deliberate Misconduct Rule, 10 CFR 50.5

John E. Rice

NOTICE OF VIOLATION

Mr. John E. Rice
[Home Address Withheld
Pursuant to 10 CFR 2.790]

IA 95-044

During an investigation conducted by the NRC Office of Investigations between August 11, 1994 and July 6, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (60 FR 34381; June 30, 1995) the violation is listed below:

10 CFR 50.5 provides, in part, that any employee of a licensee or any employee of a subcontractor of any licensee may not deliberately submit to a licensee or a licensee's subcontractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, Mr. John E. Rice, an employee of a Phillips Reliance Mechanical Company, a subcontractor of Arizona Public Service Company, deliberately submitted to Phillips Reliance on December 28, 1992, and to Palo Verde Nuclear Generating Plant on September 30, 1993, information that he knew was incomplete and inaccurate in some respect material to the NRC in violation of 10 CFR 50.5. Specifically, he failed to include in his application information regarding his employment history at JRS Builders, which included a termination for cause. Information concerning employment history is material to the determination the licensee must make in order to satisfy the regulatory requirements in 10 CFR 73.56(b)(2). (01013)

This is a Severity Level III violation (Supplement VII).

The NRC has concluded that information regarding the reason for the violation is already addressed on the docket in OI Investigation Report No. 3-94-053R. Therefore, you are not required to respond to this Notice of Violation. However, you are required to respond to the provisions of 10 CFR 2.201 if the description therein does not accurately reflect your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, IL 60532-4351 within 30 days of the date of the letter transmitting this Notice of Violation.

Dated at Lisle, Illinois
this 18th day of October 1995

SYNOPSIS

This investigation was initiated on August 11, 1994, by the Office of Investigations (OI), Region III (RIII), U.S. Nuclear Regulatory Commission (NRC), to determine if a contract employee with Phillips Reliance Mechanical Company (PRC), a subcontractor to Babcock and Wilcox Nuclear Technologies (BWNT), deliberately falsified and/or omitted employment history background information from his Employee Security Questionnaire (ESQ). The information contained in the ESQ is used by BWNT for certification and authorization for granting unescorted access to protected and vital areas of nuclear power plants licensed by the NRC.

Based on the evidence developed during this investigation, it is concluded that the contract employee deliberately falsified information on his ESQ and other employment applications, through omission of material facts, which would have been used in part, as the basis for determining the granting of unescorted access to certain NRC licensed nuclear power plants.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

October 30, 1995

IA 95-047

Mr. Roland Sawyer
[Home address deleted from
copies pursuant to 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION NO. 4-94-010)

Dear Mr. Sawyer:

This is to inform you that the NRC has found you in violation of its regulations prohibiting deliberate misconduct, specifically 10 CFR 50.5(a)(2), "Deliberate Misconduct," based on your involvement in creating or approving false records of radiation surveys at the Public Service Company of Colorado's (PSC) Fort St. Vrain Nuclear Generating Station (FSV). Until March 1994, you were employed by the Scientific Ecology Group at FSV as the Radiation Protection Operations Shift Supervisor and were responsible for supervising Radiation Protection Technicians (RPTs) and implementing SEG's radiation protection support of the FSV decommissioning project.

The NRC's rule on deliberate misconduct states, in part, that any employee of a contractor or subcontractor of any licensee may not "[d]eliberately submit to ... a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC."

Our conclusion with respect to your involvement in deliberate misconduct is based on our review of the investigation conducted by the law firm of Stier, Anderson & Malone (SAM) on behalf of PSC as documented in its December 1994 report, the results of which were subsequently confirmed by the NRC's Office of Investigations (OI). Briefly, the investigation found that several SEG supervisors and technicians had participated in falsely documenting two categories of radiation survey records associated with the decommissioning project. These included survey records associated with the release of material from the facility in late 1992 and survey records to support work conducted under various radiation work permits at FSV in early 1993. The involved records were created substantially after the surveys were purported to have been performed, but were dated and signed to make it appear they had been prepared by a radiation protection technician (RPT) and reviewed by a supervisor at the appropriate time. Furthermore, the created records contained numerous inaccuracies, such as survey instrument usage and calibration dates, that could not be supported by factual information.

The SAM investigation concluded that you falsely documented a post-decontamination survey of a Hot Service Facility block on a survey form dated September 27, 1993, and concluded that you did not do the survey. In addition, the SAM investigation concluded that you prepared 2 of some 20 falsified RWP-related survey forms, all of which were created substantially

after the surveys were allegedly performed, and that you participated in the backdating activity by reviewing and signing several survey documents prepared by other RPTs which you knew to be false. Noting that "[n]either the RPTs who prepared the backdated survey forms nor the supervisors who reviewed them made any notation that would have alerted an outside observer that the documentation came into existence at a much later date than the alleged survey activity described on the forms," the investigation concluded that "[t]he weight of the evidence supports the conclusion that the backdated RWP survey forms were intended to mislead."

Despite these records being falsified, and despite your failure to perform the survey that you claimed to have done on September 27, 1993, it appears from the investigations that surveys were actually done to assure that materials were properly released from the facility, including the Hot Service Facility block, and that workers were adequately protected from radiation hazards during these work activities. Nonetheless, such widespread falsification of required radiation protection-related records is a significant regulatory concern to the NRC. It is of particular concern that individuals entrusted with assuring radiation safety would attempt to resolve a concern about missing survey documentation by creating false records and, furthermore, that they would conspire to do so with supervisory involvement.

Therefore, the NRC has decided to issue the enclosed Notice of Violation (Notice) to you based on your violating the NRC's rule regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (60 FR 34381, June 30, 1995) the violation has been classified at Severity Level III. In determining the sanction against you, the NRC gave considerable weight to the evidence indicating that surveys were performed and to the fact that you resigned from your position with SEG; otherwise the sanction most likely would have been more severe. Should you become involved in NRC-licensed activities in the future, further violations or misconduct on your part may result in more significant action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation (Notice) when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter with its enclosure and your response, with your address removed will be placed in the PDR.

Mr. Roland Sawyer

-3-

The enclosed Notice is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub.L. No. 96-511.

Sincerely,


L. J. Callan
Regional Administrator

Enclosure: Notice of Violation

cc w/Enclosure:
Scientific Ecology Group, Inc.
ATTN: Mr. Don Neely
Vice President
628 Gallaher Road
Oak Ridge, Tennessee 37763

NOTICE OF VIOLATION

Roland Sawyer

IA 95-047

During an investigation conducted on behalf of the Public Service Company of Colorado, and subsequently confirmed by an investigation conducted by the NRC's Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (60 FR 34381, June 30, 1995) the violation is set forth below:

10 CFR 50.5 states, in part, that any employee of a contractor or subcontractor of any licensee may not "[d]eliberately submit to ... a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC."

Contrary to the above, in February and March 1993, Roland Sawyer, an employee of SEG, a contractor to a licensee (Public Service Company of Colorado), prepared and approved records of radiation surveys that he knew were inaccurate in some respect material to the NRC. Specifically, Mr. Sawyer knew that the records, which were required to support the release of material from the facility and work conducted under various radiation work permits, were dated and signed to falsely indicate that they had been created substantially earlier. In addition, in September 1993, Mr. Sawyer created a survey record supporting release of the hot service facility plug to indicate that the survey had been completed when in fact it had not. These records were material to the NRC because they were required to ensure compliance with the regulations in 10 CFR Part 20. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are required to submit a written response to this Notice of Violation to the U.S Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if it is necessary to include such information, it should clearly indicate the specific information that should not be placed in the

Notice of Violation

-2-

PDR, and provide the legal basis to support the request for withholding the information from the public.

Dated at Arlington, Texas
this 30th day of October 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

August 11, 1995

IA 95-33

Mr. Rickey O. Spell
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION AND EXPIRATION OF LICENSE

Dear Mr. Spell:

The Nuclear Regulatory Commission (NRC) received a letter dated July 17, 1995, (included as Enclosure 1) from the Georgia Power Company (GPC) informing us that they no longer have a need to maintain your operating license for the Edwin I. Hatch Nuclear Plant. We also received a letter dated July 14, 1995, (included as Enclosure 2) from the GPC containing information about your positive test for marijuana. We plan to place both of the referenced letters from GPC in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 55.55(a), the determination by your facility that you no longer need to maintain a license has caused your license, OP-20380-2, to expire as of June 23, 1995. In addition, the following violation is being issued on your docket:

10 CFR 55.53(j) prohibits the use of any illegal drugs.

Contrary to the above, Mr. Rickey O. Spell violated 10 CFR 55.53(j) in that he used an illegal drug, marijuana, as evidenced by three positive drug screens for marijuana. Specifically, a drug screen collected from Mr. Spell by a local law enforcement agency on January 11, 1995, and tested in May 1995 by the State of Georgia Forensic Science Laboratory and two drug screens, collected from Mr. Spell on January 11, 1995, and January 13, 1995, as part of Georgia Power Company's employee assistance program, were positive for marijuana.

This is a Severity Level III violation (Supplement I).

The purpose of the Commission's Fitness-for-Duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter which undermines the special trust and confidence placed in you as a licensed operator. This violation is categorized as a Severity Level III violation in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (60 FR 34381, June 30, 1995), because the use of marijuana by licensed operators is a significant regulatory concern. Because your license has expired, you are not required to respond to the Notice of Violation at this time unless you contest the violation. Should you contest the Notice of Violation, a response is required within 30 days of the date of this letter.

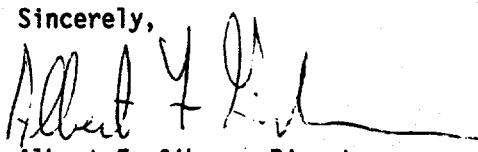
addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region II, 101 Marietta Street NW, Suite 2900, Atlanta, Georgia 30323, with a copy to the Chief, Operations Branch, at the same address.

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing Fitness-for-Duty as a licensed operator, in accordance with 10 CFR Part 55. If you reapply for an operating license, you will need to satisfy not only the requirements of 10 CFR 55.31, but also those of 10 CFR 2.201, by addressing the reasons for the violation and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator and to abide by all Fitness-for-Duty and other license requirements and conditions.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter, with your address removed, will be placed in the PDR unless you provide a sufficient basis to withdraw this violation within the 30 days specified above for a response to this Notice of Violation.

Should you have any questions concerning this action, please contact Mr. Thomas A. Peebles of my staff. Mr. Peebles can be reached at either the address listed above or telephone number (404) 331-5541.

Sincerely,



Albert F. Gibson, Director
Division of Reactor Safety

Docket No. 55-20785
License No. OP-20380-2

Enclosures:

1. GPC letter dated 7/17/95
2. GPC letter dated 7/14/95

cc w/ADDRESS DELETED w/o encls:
H. L. Sumner, Jr., General Manager
Plant Hatch
Part 55 Docket File

CERTIFIED MAIL NO. P 650 335 284
RETURN RECEIPT REQUESTED



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 19, 1995

IA 95-036

Mr. Lawrence M. Wagner
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: NOTICE OF VIOLATION
(NRC OI INVESTIGATION 1-94-048)

Dear Mr. Wagner:

On June 3, 1992, you were the Senior Nuclear Shift Supervisor (SNSS) on-duty when an incident occurred at the Hope Creek Generating Station involving the failure to have a Senior Reactor Operator (SRO) in the control room for almost three minutes while the reactor was in Operational Condition 1. This failure constituted a violation of the technical specifications of the license granted to your employer, the Public Service Electric & Gas (PSE&G) Company. Although you were notified of the event shortly after it occurred, you did not prepare an incident report or report the occurrence. As a result, PSE&G management was not apprised of the event. When management became aware in 1994 of the incident, it was reported to the NRC in a Licensee Event Report issued on October 14, 1994.

You were contacted by Mr. G. Meyer, of the NRC Region I office on September 19, 1995, and offered an opportunity to meet with the NRC staff at an enforcement conference to discuss this violation and its causes. During that telephone conversation, you indicated that you had provided all the information to OI as part of the investigation, and you did not believe that participation in an enforcement conference was needed.

On June 3, 1992, you left the control room to attend a staff meeting in the office of the Operations Manager and turned the "command and control" function over to the on-duty Nuclear Shift Supervisor (also an SRO). Afterwards, while you were still absent from the control room, the on-duty NSS desired to check the status of maintenance being performed outside of the control room, and requested another NSS to relieve him since you were still absent from the control room at the time. However, while the on-duty NSS also was out of the control room, the NSS who relieved him also left the control room for approximately three minutes, thereby leaving no SRO in the control room during that period, due to a breakdown in communications among the individuals.

While the NRC recognizes that the condition existed for only a short period, the NRC is concerned that when you were notified of the incident upon your return to the control room, you did not develop an incident report relative to this matter, and you did not record or report the occurrence as required by applicable station procedures. During your interview with an OI investigator on November 18, 1994, you indicated that you did not want the other NSSs involved to get in trouble, although you stated that this was not the primary reason for not writing the report. Further, you indicated that as the SNSS, you were responsible for taking action regarding the event. In addition, in your Remediation Plan, developed

subsequent to the incident, you stated that you incorrectly had rationalized the nuclear safety significance and that you saw two good employees who did not intentionally abandon their duties.

Your deliberate failure to follow procedures relative to reporting violations of the technical specifications constitutes a violation of your license. Your failure to follow procedures in this matter contributed to PSE&G's failure to submit a Licensee Event Report to the NRC within 30 days of the incident, as required. In view of the fact that your failure to complete the report was deliberate, the violation, which is set forth in the enclosed Notice, is classified at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), (NUREG-1600; 60 FR 34381, June 30, 1995).

As a NRC-licensed SRO, and in particular, the SNSS on-duty at the Hope Creek facility, the NRC conferred upon you its trust and confidence that you would assure that the nuclear power plant would be operated safely and in accordance with all regulatory requirements. The prompt documentation and reporting to facility management and to the NRC of off-normal conditions are important regulatory requirements that assure that significant safety issues are identified and corrected. Your actions, in deliberately not completing the incident report, did not adhere to these standards, and did not provide an appropriate example for those individuals under your supervision.

Given the significance of your actions, I have decided, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to issue to you the enclosed Notice of Violation. I gave serious consideration to the issuance of even more significant action. However, I have decided that this Notice of Violation (NOV) is sufficient in this case since you were disciplined and placed in a remediation program by the licensee shortly after this issue was identified. In addition, an NOV is being issued to PSE&G for this incident. A copy of that NOV is enclosed for your information.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, you also should describe why the NRC should have confidence that you will comply with all NRC requirements in the future, both as an SNSS, as well as in your current position in the Maintenance Department. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter (with your address removed), its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

Sincerely,



Thomas T. Martin
Regional Administrator

Enclosures:

1. Notice of Violation
2. Notice of Violation to PSE&G
3. OI Synopsis

cc w/encls:

L. Eliason, CEO and President
State of New Jersey

ENCLOSURE 1

NOTICE OF VIOLATION

Mr. Lawrence M. Wagner

Docket No. 55-61135
License No. SOP-10807-1
IA 95-036

As a result of a review of the findings of an NRC investigation conducted by the NRC Office of Investigations in 1994 and 1995, a violation of your Senior Reactor Operator license was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (NUREG-1600; 60 FR 34381, June 30, 1995), the violation is set forth below:

Senior Reactor Operator License No. SOP-10807-1 requires, in part, that when manipulating, or directing manipulation of, the controls of the Hope Creek Generating Station, you shall observe the operating procedures and other conditions specified in the facility license which authorizes operation of the facility.

Hope Creek Technical Specification 6.8.1.a requires that written procedures be established, implemented, and maintained covering the activities referenced in Appendix A of Regulatory Guide 1.33, Revision 2, February 1978. Section 1 of Appendix A of Regulatory Guide 1.33, Revision 2, February 1978, specifies the need for administrative procedures.

Nuclear Administrative Procedure NC.NA-AP.EZ-0006 (Q), Revision 3, written to satisfy the requirements in Appendix A of Regulatory Guide 1.33, requires, in Section 5.1, that anyone discovering an off-normal event shall report it to their supervisor, department manager, or Senior Nuclear Shift Supervisor (SNSS). After receiving the report of an off-normal event, the supervisor or department manager will initiate an incident report (IR) and notify the SNSS. After being notified of an off-normal event by a supervisor or department manager, the SNSS will process the IR, or if an individual has reported an off-normal event directly to the SNSS, the SNSS will initiate and process an IR. Attachment 2, Item 2, of Nuclear Administrative Procedure NC.NA-AP.EZ-0006 (Q), Revision 3, provides, in part, as an example of an off-normal event, events requiring notification in accordance with the Code of Federal Regulations.

10 CFR 50.73(a)(2)(i)(B) requires that the licensee submit a Licensee Event Report (LER) within 30 days after discovery of any event involving any operation or condition prohibited by the Technical Specifications.

Technical Specification 6.2.2.b requires that a Senior Reactor Operator be in the control room during Operational Conditions 1, 2, or 3.

Contrary to the above, on June 3, 1992, an off-normal event occurred at the facility (namely, a violation of Technical Specification 6.2.2.b in that there was no Senior Reactor Operator in the control room from 1:38 pm through 1:41 pm), and you as the SNSS on-duty at the time, although notified of the event shortly thereafter, did not initiate an IR as required by the administrative procedure. (01013)

This is a Severity Level III Violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why your license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at King of Prussia, Pennsylvania
this 19th day of September 1995



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

October 30, 1995

IA 95-046

Mr. Kenneth Zahrt
[Home address deleted from
copies pursuant to 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION NO. 4-94-010)

Dear Mr. Zahrt:

This is to inform you that the NRC has found you in violation of its regulations prohibiting deliberate misconduct, specifically 10 CFR 50.5, "Deliberate Misconduct," paragraph (a)(2), based on your involvement in creating and approving false records of radiation surveys at the Public Service Company of Colorado's (PSC) Fort St. Vrain Nuclear Generating Station (FSV). Until March 1994, you were employed by the Scientific Ecology Group at FSV as the Radiation Protection Operations Supervisor and were responsible for overseeing SEG's radiation protection support of the FSV decommissioning project.

The NRC's rule on deliberate misconduct states, in part, that an employee of a contractor or subcontractor of any licensee may not "[d]eliberately submit to ... a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC."

Our conclusion with respect to your involvement in deliberate misconduct is based on our review of the investigation conducted by the law firm of Stier, Anderson & Malone (SAM) on behalf of PSC as documented in its December 1994 report, the results of which were subsequently confirmed by the NRC's Office of Investigations (OI). Briefly, the investigation found that several SEG supervisors and technicians had participated in falsely documenting two categories of radiation survey records associated with the decommissioning project. These included survey records associated with the release of material from the facility in late 1992 and survey records to support work conducted under various radiation work permits at FSV in early 1993. The involved records were created substantially after the surveys were purported to have been performed, but were dated and signed to make it appear they had been prepared by a radiation protection technician (RPT) and reviewed by a supervisor at the appropriate time. Furthermore, the created records contained numerous inaccuracies, such as survey instrument usage and calibration dates, that could not be supported by factual information.

The SAM investigation concluded that you reviewed and signed 14 backdated material release survey forms "with full knowledge that they were backdated." These survey documents indicated that they were prepared by an RPT and reviewed by you on various dates between September and December 1992. Contrary to the dates on the forms, the SAM investigation showed that they

were all created in February 1993 after you had directed an RPT to "fix the problem" of missing survey documentation. Likewise, the SAM investigation showed that some 20 survey forms related to RWP work were created substantially after the surveys were allegedly performed, that you admitted to having directed one RPT to backdate a survey form, and that you "participated in the backdating activity" by reviewing and signing several of these falsified documents, "thereby contributing to the false appearance that the survey forms documented contemporaneous survey activity." Noting that "[n]either the RPTs who prepared the backdated survey forms nor the supervisors who reviewed them made any notation that would have alerted an outside observer that the documentation came into existence at a much later date than the alleged survey activity described on the forms," the investigation concluded that "[t]he weight of the evidence supports the conclusion that the backdated RWP survey forms were intended to mislead."

Despite these records being falsified, it appears from the investigations that surveys were actually done to assure that materials were properly released from the facility and that workers were adequately protected from radiation hazards during these work activities. Nonetheless, such widespread falsification of required radiation protection-related records is a significant regulatory concern to the NRC. It is of particular concern that individuals entrusted with assuring radiation safety would attempt to resolve a concern about missing survey documentation by creating false records and, furthermore, that they would conspire to do so with supervisory involvement.

Therefore, the NRC has decided to issue the enclosed Notice of Violation (Notice) to you based on your violating the NRC's rule regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (60 FR 34381, June 30, 1995) the violation has been classified at Severity Level III. In determining the sanction against you, the NRC gave considerable weight to the evidence indicating that surveys were performed and to the action already taken against you by your former employer; otherwise the sanction most likely would have been more severe. Should you become involved in NRC-licensed activities in the future, further violations or misconduct on your part may result in more significant action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation (Notice) when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter with its enclosure and your response, with your address removed will be placed in the PDR.

Mr. Kenneth Zahrt

- 3 -

The enclosed Notice is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub.L. No. 96-511.

Sincerely,



L. J. Callan
Regional Administrator

Enclosure: Notice of Violation

cc w/Enclosure:
Scientific Ecology Group, Inc.
ATTN: Mr. Don Neely
Vice President
628 Gallaher Road
Oak Ridge, Tennessee 37763

NOTICE OF VIOLATION

Kenneth Zahrt

IA 95-046

During an investigation conducted on behalf of the Public Service Company of Colorado, and subsequently confirmed by an investigation conducted by the NRC's Office of Investigations, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (60 FR 34381, June 30, 1995) the violation is set forth below:

10 CFR 50.5 states, in part, that any employee of a contractor or subcontractor of any licensee may not "[d]eliberately submit to ... a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC."

Contrary to the above, in February and March 1993, Kenneth Zahrt, an employee of SEG, a contractor to a licensee (Public Service Company of Colorado), reviewed and approved records of radiation surveys that he knew were inaccurate in some respect material to the NRC. Specifically, Mr. Zahrt knew that the records, which were required to support the release of material from the facility and work conducted under various radiation work permits, were dated and signed to falsely indicate that they had been created substantially earlier. These records were material to the NRC because they were required to ensure compliance with the regulations in 10 CFR Part 20. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are required to submit a written response to this Notice of Violation to the U.S Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if it is necessary to include such information, it should clearly indicate the specific information that should not be placed in the PDR, and provide the legal basis to support the request for withholding the information from the public.

Dated at Arlington, Texas
this 30th day of October 1995

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved
Individual Actions
Semiannual Progress Report
July - December 1995

5. AUTHOR(S)

Office of Enforcement

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This compilation summarizes significant enforcement actions that have been resolved during the period (July - December 1995) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

Wrongdoers

1. REPORT NUMBER
(Assigned by NRC, Add Vol., Supp., Rev., and Addendum Numbers, if any.)

NUREG-0940, PART I
Vol. 14, Nos. 3 & 4

3. DATE REPORT PUBLISHED

MONTH	YEAR
-------	------

February 1996

4. FIN OR GRANT NUMBER

6. TYPE OF REPORT

Technical

7. PERIOD COVERED (Inclusive Dates)

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE