Enforcement Actions: Significant Actions Resolved Material Licensees (Non-Medical)

Quarterly Progress Report
October-December 1994

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ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (October - December 1994) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to material licensees (non-medical) 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, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

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ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED
MATERIAL LICENSEES (NON-MEDICAL)

October - December 1994

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform NRC material licensees (non-medical) about significant enforcement actions and their resolution for the fourth quarter of 1994. Enforcement actions are issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support (DEDS), and the Regional Administrators. The Director, Office of Enforcement, may act for the DEDS in the absence of the DEDS or as directed. The actions involved in this NUREG involve NRC's civil penalties as well as significant Notices of Violation.

An objective of the NRC Enforcement Program is to encourage licensees to improve their performance and, by example, the performance of the licensed industry. Therefore, it is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by NRC, so all can learn from the errors of others, thus improving performance in the nuclear industry and promoting the public health and safety as well as the common defense and security.

A brief summary of each significant enforcement action that has been resolved in the fourth quarter of 1994 can be found in the section of this report entitled "Summaries." Each summary provides the enforcement action (EA) number to identify the case for reference purposes. The supplement number refers to the activity area in which the violations are classified according to guidance furnished in the U.S. Nuclear Regulatory Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, 57 Fed. Reg. 5791 (February 18, 1992). Violations are categorized in terms of five levels of severity to show their relative importance within each of the following activity areas:

Supplement I	- Reactor Operations
Supplement II	- Facility Construction
Supplement III	- Safeguards
Supplement IV	- Health Physics
Supplement V	- Transportation
Supplement VI	- Fuel Cycle and Materials Operations
Supplement VII	- Miscellaneous Matters
Supplement VIII	- Emergency Preparedness

Part A of this report contains enforcement actions taken against an individual. 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.

Part B of this report consists of copies of completed civil penalty or Order actions involving material licensees (non-medical), arranged alphabetically. Part C includes copies of Notices of Violation that were issued to material licensees (non-medical) for a Severity Level III violations, but for which no civil penalty was assessed.

SUMMARIES

A. INDIVIDUAL ACTIONS

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, creating false audit records, and requesting 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.

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.

Jeffrey DeArmond

IA 94-033

An Order Prohibiting Involvement in NRC-licensed Activities (Effective Immediately) was issued November 15, 1994 to the above individual. The Order was based on investigation findings that showed that the above individual created false records at the request of the radiation safety officer. The Order removes the individual from NRC-licensed activities for a period of one year. In addition, the first time following the prohibition that the individual engages in NRC-licensed activities, the individual is to notify the NRC.

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.

An Order Prohibiting Involvement in Licensed Activities (Effective Immediately) was issued May 23, 1994 to the above individual. The Order was based on an inspection and investigation which concluded that the individual had intentionally increased the dosage level of NRC-licensed materials given to patients without obtaining authorization from a physician authorized user, and had falsified the dosage measurement records associated with those administrations such that the true dosage could not be determined from a review of the records. The individual requested a hearing and a settlement agreement was signed September 9, 1994. Under the terms of the Order and the Settlement, the individual is prohibited from NRC-licensed activities for a period of one year and must provide notice to the NRC of the acceptance of employment involving NRC-licensed activities for a period of three years.

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued September 7, 1994 to the above individual. The Order was based on the individual providing false or misleading information to the NRC in a letter in response to a Notice of Violation and directing an employee to fabricate false records of NRC-required wipe tests. The Order (1) prohibits the individual from being an authorized user and from acting as an RSO for a period of one year; however, he is permitted to perform NRC-licensed activities under the direct supervision of an authorized user, (2) requires the individual, for a period of three years to notify the NRC within 20 days of the acceptance of an employment offer involving NRC-licensed activities.

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.

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.

Thomas A. Nisbet

IA 94-031

An Order Prohibiting Involvement in NRC-licensed Activities (Effective Immediately) was issued October 31, 1994 to the above individual. The Order was based on inspection and investigation findings which concluded that the individual deliberately violated NRC requirements by failing to properly supervise a radiographer's assistant and by providing false information to a licensee. The Order prohibits the individual from engaging in NRC-licensed activities for a period of one year. In addition, the first time following the prohibition that the individual engages in NRC-licensed activities, the individual is to notify the NRC.

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.

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 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.

George D. Shepherd

IA 93-002

An Order Prohibiting Involvement in Certain NRC-Licensed Activities was issued October 27, 1993 to the above individual. The Order was based on

the individual deliberately failing to wear an alarm ratemeter, failing to post boundaries, and failing to perform radiation surveys of the exposure device and guide tube during the performance of radiographic operations on July 1, 1992. The Order prohibits the individual for a period of two years from performing, supervising, or engaging in any way in licensed activities under an NRC license, or an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction. For a period of two years after the prohibition the individual shall be required to notify the NRC of his employment by any person engaged in licensed activities under an NRC or Agreement State license, so that appropriate inspections can be performed. During that same period the individual is also required to provide a copy of the Order to any person employing him and who holds an NRC license or an Agreement State license and performs licensed activities in an NRC jurisdiction.

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.

B. CIVIL PENALTIES AND ORDERS

Amoco Oil Company, Whiting, Indiana
Supplements VI and VII, EA 93-128

A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$25,000 and Demand for Information was issued November 15, 1994, to emphasize the licensee's responsibility to properly manage and support licensed activities and the significant concern of the NRC regarding licensee supervisors' involvement in willful violations. The action was based on violations involving: (1) failure of the RSO to perform audits, creation of false audit records by the RSO and two Assistant RSOs, and the RSO deliberately providing false information to

the NRC concerning preannouncement of quarterly audits, and (2) a breakdown in the management of NRC-licensed activities. The licensee responded and paid the civil penalties on December 13, 1994.

Brian A. Clark, Dunmore, Pennsylvania
EA 94-093

An Order to Transfer Byproduct Material to an Authorized Recipient (Effective Immediately) and Demand for Information was issued June 21, 1994. The action was based on the failure of the licensee (after his license had expired) to transfer a Troxler Gauge containing a 40 millicurie americium-241 source in its possession to an authorized recipient. The licensee responded by fax on August 12, 1994 and on November 4, 1994 a letter of Notice of Termination of License was issued.

Harman Mining Corporation, Harman, Virginia
Supplement VI, EA 94-227

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$250 was issued November 22, 1994, to emphasize the importance of management oversight and adequate control of byproduct material. The action was based on the loss of a Kay-Ray 7063P density gauge containing byproduct material as a result of the licensee's failure to control the device and to maintain records of the device. The gauge was inadvertently removed from the licensee's facility by a contractor who was hauling away scrap metal. A metal recycling company found the byproduct material in shredded material leaving its site, and it was intact and no radioactive material was released. The licensee responded and paid the civil penalty on December 20, 1994.

Omnivave Electronics Corporation, Gloucester, Massachusetts
EA 94-124

An Order to Cease and Desist use and Possession of Regulated Byproduct Material and Decommission Facility and Demand for Information was issued August 2, 1994 based on the licensee's possession of cobalt-60 and krypton-85 byproduct material, cobalt-60 contamination, and cobalt-60 waste without renewing the license which expired in 1990. The licensee responded August 9, 1994 and a letter of license termination was issued December 9, 1994.

Radiation Management Consultants, Philadelphia, Pennsylvania
Supplements IV, V, VI, EA 94-114

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$1,500 was issued July 11, 1994, to emphasize the importance of compliance with NRC requirements and the seriousness of management's failure to maintain proper control and oversight of licensed material until that material is validly transferred. The action was based on an unauthorized change of location of licensed material, transportation violations, failure to post a high radiation area, and missing inventory and personnel exposure records. The licensee responded in letters dated

August 10 and 19, 1994. After consideration of the licensee's responses requesting mitigation, an Order Imposing Civil Monetary Penalty in the amount of \$1,500 was issued November 3, 1994. The licensee paid the civil penalty on November 11, 1994.

C. SEVERITY LEVEL I, II AND III, NO CIVIL PENALTY

Adams Construction Company, Roanoke, Virginia
Supplement VI, EA 94-243

A Notice of Violation was issued December 28, 1994 based on a violation involving the failure of the licensee to maintain control and constant surveillance of licensed material in an unrestricted area that was not in storage. The gauge was left on a roadway and was damaged when a vehicle ran over it. A civil penalty was not proposed because the licensee identified the violation and took immediate corrective actions which included (1) securing the job site and retrieving the byproduct material, (2) training all gauge users to ensure their compliance with license conditions and NRC regulations, and (3) requiring each gauge user to again read the Information Notice "Portable Moisture-Density Gauge Users Responsibilities During Field Operations" to ensure understanding and compliance.

ATEC Associates, Inc., Cincinnati, Ohio
Supplement IV, EA 94-229

A Notice of Violation was issued November 23, 1994 based on a violation involving damage to a soil moisture/density gauge containing NRC licensed material. The device was left unattended and direct surveillance was not maintained, and construction equipment ran over the gauge while the technician was away. However, the NRC licensed material was not damaged. A civil penalty was not proposed because: the licensee identified the violation, there were prompt and extensive corrective actions, and the licensee exhibited good past performance.

East Jordan Iron Works, Inc., East Jordan, Michigan
Supplement VI, EA 94-200

A Notice of Violation was issued October 24, 1994 based on a violation involving potential radiation overexposure to workers who entered a cupola with nuclear gauges that were not shielded. A civil penalty was not issued because (1) the licensee identified the potential violation involving radiation exposure to the workers and also identified the violations pertaining to the unauthorized relocation of gauges and failure to have lock-out procedures, and (2) the licensee took prompt and extensive corrective actions, including upgrading lock-out procedures, training the staff, restructuring the radiation safety officer position, and revising the license.

Northern Indiana Public Service Company, Hammond, Indiana
Supplement IV, EA 94-218

A Notice of Violation was issued November 17, 1994 based on a violation involving the loss of a nuclear gauge. The device was discovered

missing in the semiannual inventory in July 1994. A civil penalty was not proposed because the licensee identified the violation and the licensee had overall good past performance.

Penn Inspection Company, Chickasha, Oklahoma
Supplement IV, EA 94-213

A Notice of Violation was issued November 7, 1994 based on the failure of the licensee to limit the annual occupational dose to a radiographer to 5 rems total effective dose equivalent. A civil penalty was not proposed because of the licensee's good past performance, based on prior NRC inspections.

University of Missouri - Columbia, Columbia, Missouri
Supplement V, EA 93-058

A Notice of Violation was issued November 23, 1994 based on violations involving the shipment of radionuclides with other irradiation byproduct radionuclides which were neither identified on the shipping papers nor properly labeled. A civil penalty was not proposed to encourage the licensee to aggressively self-identify and take corrective action for violations. The corrective actions included: (1) notifying the affected customers to ensure that they were aware that they had been receiving unexpected byproduct radionuclides, (2) requesting customers of irradiation services to certify isotopic enrichment of targets and identify any impurities or encapsulation that could result in reportable shipping activity, (3) listing expected byproduct radionuclides, regardless of the customer identifying them on the irradiation requests, (4) screening all packages with a sodium iodide detector prior to shipment, (5) investigating the use of computer codes to generate lists of radionuclide activities for each target, and (6) creating a new supervisory position to direct the group reviewing irradiation requests.

A. INDIVIDUAL ACTIONS

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

AUG 2 '8 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.

Paul A. Bauman

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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, 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.

V

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. 20555-0001

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.
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

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

V

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. 20555-0001

SEP 08 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.

Jerome E. Bodian, M.D.

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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/encs:

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.

Case No. 1-92-020R

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
JERMOE E. BODIAN, M.D.
Englewood, New Jersey

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Docket No. 030-02551
License No. 29-12417-01
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: (1) 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 ± 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. 20555-0001

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

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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, 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. 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.

V

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. 20555-0001

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,

A handwritten signature in dark ink, reading "James L. Milhoan". The signature is fluid and cursive, with the first name "James" and last name "Milhoan" clearly legible. The middle initial "L." is smaller and positioned between the first and last names.

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

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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 COMMISSIONDOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

'94 AUG 18 P2 L8

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Jerry R. KlineOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the matter of

NUCLEAR SUPPORT SERVICES, INC.

SERVED AUG 18 1994EA 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 94-003ASLBP 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, Chairman
ADMINISTRATIVE JUDGE

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Rockville, MD.
August 18, 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, NEST 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
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

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

November 15, 1994

IA 94-033

Jeffrey DeArmond
[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. DeArmond:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (Order) is being issued as a consequence of your actions while employed as an Assistant Radiation Safety Officer (ARSO) at the Amoco Refinery, Whiting, Indiana, in 1992. This Order prohibits your involvement in NRC-licensed activities for a period of one year 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. Mr. Lieberman 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.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosures:

1. Order Prohibiting Involvement
in NRC Licensed Activities
2. Notice of Violation to Amoco

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
JEFFREY DEARMOND

)
)
)

IA 94-033

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. DeArmond performed duties as an Assistant Radiation Safety Officer (ARSO) for the Licensee until he was relieved of these duties on October 16, 1992.

II

On July 27, 1992, the NRC Region III office received information that the Licensee's Radiation Safety Officer (RSO), had not conducted field audits of radiographers and radiographer's assistants as required by license conditions and that he fabricated reports for the audits that he did not perform by

documenting that 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. Item 10.5 of that application required, in part, that certain records be generated and maintained, including a record of the quarterly audits of radiographers and radiographer's assistants.

Testimony provided by Mr. DeArmond on November 5, 1992 indicated that at the request of the RSO on or about September 15, 1992, Mr. DeArmond falsified at least two records of audits of radiographers and radiographer's assistants for May 1992 by generating records for audits that were not performed. This is contrary to the audit requirements established by Item 10.3 and the record generation and maintenance requirements established by Item 10.5 of the license application incorporated into the License as Condition No. 18; and caused the Licensee to be in violation of 10 CFR 30.9(a) and constituted a

violations of 10 CFR 30.10(a) of the Commission's regulations.

The Licensee conducted an internal investigation and based on the results of its investigation the Licensee suspended Mr. DeArmond's employment for two weeks without pay.

III

Based on the above, it appears that Mr. DeArmond engaged in deliberate misconduct during September 1992, when at the request of the RSO, Mr. DeArmond created false field audit records of radiographers and radiographer's assistants for audits which had not been performed, thus making the record appear as though a field audit was performed at the specified interval. Mr. DeArmond's actions caused the Licensee to be in violation of Items 10.3 and 10.5 of the license application incorporated into the License as Condition No. 18 and 10 CFR 30.9, and constituted a violation of 10 CFR 30.10 of the Commission's regulations. As an ARSO, Mr. DeArmond supervised the radiation safety program associated with NRC Byproduct Material License No. 13-00155-10 and Mr. DeArmond 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. DeArmond were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. DeArmond be

prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. DeArmond 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. DeArmond'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 Part 30, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Jeffrey DeArmond is prohibited for one year 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. DeArmond is employed in NRC-licensed activities following the one-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. DeArmond 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. DeArmond of good cause.

V

In accordance with 10 CFR 2.202, Mr. DeArmond 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. DeArmond 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. DeArmond, if the answer or hearing request is by a person other than Mr. DeArmond. If a person other than Mr. DeArmond 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. DeArmond 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. DeArmond, 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. 20555-0001

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
Richard J. Gardecki

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IA 93-001

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. 20555-0001

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.

V

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

MAY 23 1994

IA 94-12

Kelli J. Hinds
(Address Deleted)

Dear Ms. Hinds:

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

The enclosed Order Prohibiting Involvement in Licensed Activities (Effective Immediately) is being issued as a consequence of your actions while employed by Ball Memorial Hospital, Muncie, Indiana, from October 17, 1988, until your employment was terminated effective September 23, 1993. The NRC conducted an inspection and an investigation and concluded that you: (1) intentionally increased the dosage level of NRC-licensed materials given to patients without obtaining authorization from a physician authorized user, and (2) falsified the dosage measurement records associated with those administrations so that the dosage increases could not be determined from a review of the records. As detailed in the enclosed Order, your deliberate actions caused violations of NRC requirements and placed you in violation of 10 CFR 30.10, "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 Licensed Activities (Effective Immediately). Failure to comply with the provision of this Order may result in civil or criminal sanctions.

Questions concerning the Order should 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,

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

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

UNITED STATES :
NUCLEAR REGULATORY COMMISSION

In the Matter of
Kelli J. Hinds
Muncie, Indiana

)
)
)

IA 94-12

ORDER PROHIBITING INVOLVEMENT IN LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Ball Memorial Hospital, Muncie, Indiana (Ball or Licensee) is the holder of Byproduct Material License No. 13-00951-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the use of byproduct material for medical purposes pursuant to 10 CFR Part 35 (e.g., as radiopharmaceuticals identified in 10 CFR 35.100, 35.200 and 35.300; as brachytherapy sources identified in 10 CFR 35.400; as sealed sources identified in 10 CFR 35.500; and as prepackaged in vitro kits identified in 10 CFR 31.11). The facility where licensed materials are authorized for use and storage is located at 2401 University Avenue, Muncie, Indiana. The license, originally issued on August 19, 1958, was last amended on February 24, 1994. The license was due to expire on December 31, 1993, but continues in effect pursuant to 10 CFR 30.37(b).

Ms. Kelli J. Hinds was employed by Ball from October 17, 1988, until her employment was terminated by Ball effective September 23, 1993. She most recently held the position of Acting Chief Nuclear Medicine Technologist at Ball with responsibilities involving compliance with NRC requirements for the use of byproduct materials.

On July 19, 1993, the NRC Region III Office received information from an individual outside of the Licensee's organization that the Licensee was investigating an allegation that it received from one of its nuclear medicine technologists in early June 1993. NRC contacted the Licensee to verify the information and determined that, allegedly, the Acting Chief Nuclear Medicine Technologist at Ball Memorial Hospital, Ms. Kelli J. Hinds, had increased the dosages of radiopharmaceuticals used in nuclear medicine diagnostic studies in order to reduce the imaging time and had falsified the records of the dosage measurements. In mid-June 1993, during the Licensee's investigation, Ms. Hinds admitted that she increased the dosages of radiopharmaceuticals given to patients for nuclear medicine diagnostic studies in order to minimize a patient's discomfort, to reduce the duration of a study of a critically ill patient, or to enhance the clarity of the image for a study performed on an obese patient. Based on the Licensee's investigation, the Licensee terminated Ms. Hinds' employment on September 23, 1993.

The NRC commenced an inspection on July 21, 1993, and determined that, for approximately 10 percent of the lung, liver, bone and gastrointestinal tract imaging studies using technetium-99m and xenon-133 that she performed between October 1988 to June 1993, Ms. Hinds increased the dosages of the radiopharmaceutical by as much as 40 percent above the approved dosage ranges without authorization from a physician authorized user. Further, Ms. Hinds entered false information in the dosage measurement records (*i.e.*, dosages within the approved range were indicated in the records even though the actual

administered dosages were higher). In addition, even after Ms. Hinds became Acting Chief Nuclear Medicine Technologist in December 1992, she stated that she requested and received approval from the Radiation Safety Committee to increase dosage amounts for various studies but continued to administer dosages greater than the authorized quantities without physician approval and recorded false information. As a result of the NRC inspection, a Confirmatory Action Letter (CAL) was issued to the Licensee on July 26, 1993, and a Confirmatory Order was issued to the Licensee on October 20, 1993 (EA 93-215). The CAL and Order documented specific procedures and verifications to prevent any further unauthorized increases in patient dosages.

The NRC Office of Investigations (OI) is conducting an investigation of this matter. While the investigation has not been completed, the available information establishes that, since 1988, Ms. Hinds deliberately increased the dosages of NRC-licensed materials used in certain nuclear medicine procedures and attempted to conceal the increase in the dosage by falsifying the dosage measurement records. In a transcribed sworn statement on September 1, 1993, Ms. Hinds stated that she was aware of the authorized radiopharmaceutical dosage limits at Ball and she admitted that, since 1988, she has increased the dosage of radiopharmaceuticals given to some patients without express authorization from a physician authorized user and that she falsified the records of those radiopharmaceutical dosage measurements. Although the NRC investigation is continuing, the following significant violations have been identified to date:

- A. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 35.25(a)(2) in that Ms. Hinds failed to follow the instructions of the supervising physician authorized users as contained in the Licensee's procedure, "Approved Dose Ranges of Radiopharmaceutical Use." That procedure specifies the radioisotope, procedures and dosage ranges to be used. Ms. Hinds intentionally increased the dosages beyond the range prescribed by the procedure.
- B. Ms. Hinds' deliberate actions caused the Licensee to be in violation of License Condition No. 16, which requires the Licensee to implement the model safety rules published in NRC Regulatory Guide 10.8, Appendix I, Item 14. Item 14 requires that each patient dosage be assayed in the dose calibrator and prohibits the use of a dosage if it is more than 10 percent off from the prescribed dosage. Ms. Hinds indicated that she increased some patient dosages by 10 - 40%.
- C. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 30.9(a), which requires that records required to be maintained by a licensee be complete and accurate in all material respects. More specifically, 10 CFR 35.53(c) requires that records of the measurement of radiopharmaceutical dosages contain certain information, including the prescribed dosage and activity of the dosage at the time of measurement. Ms. Hinds admitted that from October 1988 to June 1993, she increased the

activity of some radiopharmaceutical dosages after the initial assay was performed and she did not enter into the dosage measurement records the actual activity of the radiopharmaceutical that was given to some patients. Rather, she entered an activity level which was within the dosage range prescribed by the physician authorized users at Ball.

The deliberate actions described in A - C above caused Ms. Hinds to be in violation of 10 CFR 30.10(a)(1), which requires in part that 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.

III

As the Licensee's Acting Chief Nuclear Medicine Technologist from approximately December 1992 through June 1993, Ms. Hinds supervised the other nuclear medicine technologists employed by Ball and Ms. Hinds was responsible for ensuring that the Commission's rules, regulations, and license conditions in her area of responsibility were met and the records that were created to demonstrate compliance with the Commission's rules, regulations, and license conditions were true and accurate in all material respects.

As set forth above, Ms. Hinds engaged in deliberate misconduct from October 1988 through June 1993, by increasing the dosages of radiopharmaceuticals

given to patients at Ball Memorial Hospital without first receiving the approval of a physician authorized user as required by the Commission's regulations. Ms. Hinds further engaged in deliberate misconduct by entering false information into the dosage measurement records for the dosages actually given to patients. These actions constitute violations of 10 CFR 30.9, 35.25(a)(2), 35.53, and Condition No. 16 of NRC Byproduct Materials License No. 13-00951-03 on the part of the Licensee; and violations of 10 CFR 30.10 on the part of Ms. Hinds.

Consequently, I lack the requisite reasonable assurance that NRC-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 Ms. Hinds is permitted at this time to supervise or otherwise engage in licensed activities. Therefore, the public health, safety and interest require that Ms. Hinds be prohibited from being involved in any NRC-licensed activities for a period of one year from the date of this Order. In addition, for a three year period from the date of the Order, the public health, safety and interest require that Ms. Hinds be required to: 1) provide a copy of this Order to any prospective employer who engages in NRC-licensed activities at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Ms. Hinds' prohibition from NRC-licensed activities for a period of 1 year from the date of this Order and so that any prospective employer is aware of the Order prior to making a decision regarding Ms. Hinds employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities, and 2) notify the NRC of the acceptance of

employment involving NRC-licensed activities to assure that the NRC can monitor the status of Ms. Hinds' compliance with the Commission's regulatory 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, 10 CFR Part 30, and 10 CFR Part 35, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Ms. Kelli J. Hinds 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 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.
- B. For a period of three years from the date of the Order, Ms. Hinds shall:
 - 1. Provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in A above)

at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this requirement is to ensure that all prospective employers are aware of Ms. Hinds' prohibition from engaging in NRC-licensed activities for a period of 1 year from the date of this Order and are aware of the Order prior to making a decision regarding Ms. Hinds' employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities.

2. Within 20 days of her acceptance of an employment offer involving NRC-licensed activities, or her 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 she is, or will be, involved in the NRC-licensed activities.
- C. If Ms. Hinds is currently involved in NRC-licensed activities at any employer or entity, Ms. Hinds shall, in accordance with Paragraph IV.A above, immediately cease involvement in the NRC-licensed activities and, within 20 days of the date of this Order, provide notice to the Director, Office of Enforcement, at the address in Paragraph IV.B.2 above, of the name, address, and telephone number of the employer or entity where the licensed activities were being conducted.

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

V

In accordance with 10 CFR 2.202, Ms. Kelli J. Hinds 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 Ms. Hinds 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 Ms. Hinds, if the answer or hearing request is by a person other than Ms. Hinds. If a person other than Ms. Hinds 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. Hinds 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), Ms. Hinds, 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

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

Dated at Rockville, Maryland
this 23rd day of May 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-94-32

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Peter S. Lam
Thomas D. Murphy

In the Matter of

KELLI J. HINDS

(Order Prohibiting
Involvement in Licensed
Activities)

Docket No. IA-94-012

ASLBP No. 94-697-06-EA

October 3, 1994

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

By immediately effective order dated May 23, 1994, the NRC staff placed conditions on the involvement of Kelli J. Hinds in NRC-licensed activities. See 59 Fed. Reg. 28,433 (1994). Shortly thereafter, Ms. Hinds requested that this proceeding be convened to permit her to contest the validity of the staff's order. See 59 Fed. Reg. 31,654 (1994). Now, by joint motion dated September 26, 1994, the parties request that we approve a September 9, 1994 settlement agreement they have provided and dismiss this proceeding without adjudication of any of the legal or factual matters at issue.

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

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reviewed the parties' settlement accord to determine whether approval of the agreement and termination of this proceeding is in the public interest. On the basis of 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 third day of October 1994, ORDERED, that

1. The September 26, 1994 joint motion of the parties is granted and we approve their September 9, 1994

"Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.

2. This proceeding is dismissed."

THE ATOMIC SAFETY
AND LICENSING BOARD

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Thomas D. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 3, 1994

* Copies of this memorandum and order are being sent this date to counsel for Ms. Hinds by facsimile transmission and to staff counsel (without the accompanying attachment) by E-mail transmission through the agency's wide area network system.

September 9, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. IA-94-012
KELLI J. HINDS	)	
	)	ASLBP NO. 94-697-06-EA
(Order Prohibiting Involvement	)	
in Licensed Activities)	)	

SETTLEMENT AGREEMENT

On May 23, 1994, the NRC Staff (Staff) issued an Order Prohibiting Involvement in Licensed Activities (Effective Immediately) to Kelli J. Hinds. 59 Fed. Reg. 28433 (June 1, 1994) (Order).

On May 27, 1994, Ms. Hinds requested a hearing on the Order. In response to Ms. Hinds' hearing request, an Atomic Safety and Licensing Board was established on June 13, 1994. 59 Fed. Reg. 31654.

After discussions between the Staff and Ms. Hinds, both the Staff and Ms. Hinds agree that it is in the public interest to terminate this proceeding without further litigation and without reaching the merits of the underlying Order, subject to the approval of the Atomic Safety and Licensing Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED by and between the NRC Staff and Kelli J. Hinds as follows:

1. The Staff agrees to withdraw Section IV.B.1. of the Order. The Staff further agrees to withdraw in its entirety requirement (1) of the third paragraph of Section III.

of the Order. Such withdrawals will become effective upon the approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

2. Ms. Hinds agrees to withdraw with prejudice her request for and otherwise waives her right to a hearing in connection with this matter and waives any right to contest or otherwise appeal this Settlement Agreement once approved by the Atomic Safety and Licensing Board. Such withdrawal will become effective upon approval of this Settlement Agreement by the Atomic Safety and Licensing Board.

3. All other provisions of the Order as issued to Ms. Hinds on May 23, 1994, will remain in effect.

4. The parties acknowledge that execution of this Settlement Agreement does not constitute any admission on the part of Ms. Hinds that she has violated any law or committed any wrongful act.

5. This Settlement Agreement constitutes full settlement with regard to Kelli J. Hinds and the NRC and the NRC agrees not to initiate or pursue any further administrative proceedings against Ms. Hinds arising out of the facts alleged in the Order dated May 23, 1994.

6. This Settlement Agreement serves only to settle the civil matter between Ms. Hinds and the NRC as set forth in IA 94-12. Nothing in this Settlement Agreement shall preclude criminal prosecution arising out of the facts alleged in the Order dated May 23, 1994.

FOR THE NRC STAFF:

Susan S. Chidakel
Susan S. Chidakel

FOR KELLI J. HINDS:

Kelli J. Hinds

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

SEP 07 1994

IA 94-022

William F. Kusmik, Ph.D.
[HOME ADDRESS DELETED
UNDER 2.790]

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

Dear Dr. Kusmik:

On June 7, 1994, the NRC conducted a transcribed enforcement conference with your employer, Creative Biomolecules, Inc. (CBM), to discuss numerous violations identified during an NRC inspection at the facility on November 10 and 11, 1992, as well as during a subsequent investigation at the facility by the NRC Office of Investigations (OI). At the time of the inspection, you were the Radiation Safety Officer (RSO) at the facility. Although you declined to be interviewed during the OI investigation, exercising your Fifth Amendment right, you did provide information during the enforcement conference.

Based on the evidence gathered during the OI investigation and at the enforcement conference, the NRC has determined that you engaged in deliberate misconduct at the time you were the RSO in that you: (1) deliberately directed and caused an employee of CBM to fabricate records of certain wipe tests required by CBM's NRC license to be performed, when you knew that they had not been performed; and (2) deliberately provided inaccurate information to the NRC in a letter, dated September 21, 1992, in response to a previous Notice of Violation issued by the NRC on July 29, 1992.

At the enforcement conference at which you were in attendance and provided information, you were specifically questioned regarding these matters. With respect to the wipe test records, you admitted during the enforcement conference that you directed an employee to fabricate records of wipe tests for certain months, when you knew that the wipe tests had not been performed for those months. With respect to your September 21, 1992 letter, you admitted during the enforcement conference that the letter stated that certain actions had been taken in response to NRC inspection findings articulated in a July 29, 1992 letter and Notice of Violation, when in fact, those stated actions had not been taken. The details of these findings are described in the enclosed Order issued to you, as well as in a Notice of Violation and Proposed Imposition of Civil Penalties - \$15,000 and Order Modifying License (Effective Immediately) issued on this date to your employer. A copy of the NRC actions issued to CBM are also enclosed.

Your deliberate actions in directing and causing the fabrication of inaccurate records at the facility, as well as submitting inaccurate information to the NRC, are of particular concern to the NRC. These actions were particularly serious, since, as the RSO at the facility, you were charged with ensuring that CBM staff adhered to NRC requirements. Rather than properly discharging those responsibilities, you set an unacceptable example for employees at the facility, in particular, for the individual to whom you gave direction to fabricate the false records. These deliberate actions on your part resulted in your employer being in violation of NRC requirements set forth in 10 CFR 30.9, for which, in part, the civil monetary penalties are being issued to CBM on this date. Furthermore, by deliberately submitting information to the NRC in the September 21, 1992 letter, which you knew to be inaccurate in some respect material to the NRC, you violated the deliberate misconduct rule set forth in 10 CFR 30.10, a copy of which is enclosed. That rule provides, in part, that if an employee of a licensee engages in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or any term, condition, or limitation of any license, issued by the Commission, or if an employee deliberately provides information to the NRC which the employee knows to be inaccurate in some respect material to the NRC, that employee may be subject to enforcement action. Such deliberate misconduct, particularly by an RSO, cannot and will not be tolerated by the NRC.

Therefore, the NRC is issuing to you the enclosed Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately) which: (1) prohibits you from being an authorized user and from acting as an RSO for a period of one year from the date of this Order; you are permitted, however, to perform NRC-licensed activities under the direct supervision of an authorized user; (2) requires you, for a period of three years from the date of the Order, to notify the NRC within 20 days of your acceptance of an employment offer involving NRC-licensed activities; and (3) requires you, within 30 days from the date of this Order, to provide a statement of your commitment to comply with NRC requirements and the basis why the Commission should have confidence that you will comply with applicable NRC requirements. The staff notes that 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.

Should you have any questions on this matter, please contact Ms. Patricia Santiago, Assistant Director for Materials, NRC Office of Enforcement, at (301) 504-3055.

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.

Sincerely,

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

Enclosures:

1. Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalties and Order Modifying License (Effective Immediately) issued to Creative Biomolecules, Inc.
3. Copy of Deliberate Misconduct Rule

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

DR. WILLIAM F. KUSMIK

IA 94-022 ..

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

I

Creative Biomolecules, Inc. (Licensee) is the holder of Byproduct License No. 20-20592-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes the Licensee to use certain stated byproduct materials for research and development as defined in Section 30.4(q) of 10 CFR Part 30. At the time of an NRC inspection in November 1992, Dr. William F. Kusmik was the Radiation Safety Officer at the facility. The License, originally issued on April 20, 1983, was amended in its entirety on March 3, 1993, and was due to expire on March 31, 1994, but has remained in effect since that time due to a timely renewal request made pursuant to 10 CFR 30.37(b).

II

On November 10-11, 1992, the NRC performed an inspection at the Licensee's facility in Hopkinton, Massachusetts. During the inspection, the NRC identified numerous violations of NRC requirements. As a result of the inspection findings, a Confirmatory Action Letter was issued to the Licensee on November 12, 1992. The inspector also found indications that information provided by Dr. William F. Kusmik (the Radiation Safety Officer (RSO) at the facility at the time of an NRC inspection in November 1992) in a letter dated

September 21, 1992, did not appear to be accurate, and that records of monthly wipe tests at the facility may have been falsified. As a result, an investigation was conducted by the NRC Office of Investigations (OI).

As a result of the OI investigation, a transcribed enforcement conference was conducted on June 7, 1994, with Dr. Kusmik, to address whether he:

(1) deliberately directed a Licensee employee to falsify certain NRC-required wipe test records; and (2) deliberately provided false or misleading information to the NRC in a letter dated September 21, 1992, in response to a previous Notice of Violation (Notice) issued by the NRC on July 29, 1992.

With respect to the issue of records falsification, Dr. Kusmik admitted during the enforcement conference that in 1991 he directed an employee to fabricate records of wipe tests for certain months (at a minimum, for November 1990 and February 1991), even though the tests had not been performed for those months.

With respect to the information provided in the September 21, 1992 letter sent to the NRC under Dr. Kusmik's signature, Dr. Kusmik admitted during the enforcement conference that he had stated in the letter that certain actions had been taken in response to NRC inspection findings articulated in the July 29, 1992 letter and Notice, when, in fact, those stated actions had not been taken. Specifically, in response to the July 29, 1992 Notice involving the failure to perform surveys of a certain laboratory required to be performed by License Condition 14, the September 21, 1992 letter stated that "To avoid a repetition of these discrepancies, three individuals within the laboratory have been trained to perform these surveys." This statement was

not accurate in that Dr. Kusmik stated during the enforcement conference that while he intended to provide such training, no such training subsequent to the July 29, 1992 Notice had been provided at the time Dr. Kusmik signed and sent the September 21, 1992 letter to the NRC. In addition, in response to a concern expressed in the NRC's July 29, 1992 letter transmitting the Notice, involving the licensee's plans to obtain access to a thyroid phantom or some other method to quantitatively determine thyroid uptakes of personnel, the licensee's September 21, 1992 letter stated that "A calibrated survey meter with a Sodium Iodine [Iodide] crystal has been recalibrated for thyroid counting using a thyroid phantom consisting of a plexiglas block approximately three inches thick." This statement was not accurate in that Dr. Kusmik admitted during the enforcement conference that the sodium iodide crystal had not been recalibrated at the time he had signed and sent the letter to the NRC.

Based on the above, the NRC has concluded that in 1991, Dr. Kusmik caused the Licensee to be in violation of 10 CFR 30.9(a). Specifically, Dr. Kusmik deliberately directed an employee to fabricate records, required to be maintained by the License, of wipe tests for certain months (at a minimum, for November 1990 and February 1991), even though the tests had not been performed during those months. In addition, on September 21, 1992, Dr. Kusmik violated 10 CFR 30.10(a) by engaging in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 30.9(a). Specifically, Dr. Kusmik deliberately submitted to the NRC false information in the September 21, 1992 letter in

which he stated that: (1) three individuals within the laboratory had been trained to perform surveys; and (2) a calibrated survey meter with a Sodium Iodide crystal had been recalibrated for thyroid counting.

III

As a result, the NRC has serious concerns regarding Dr. Kusmik's performance and supervision of NRC-licensed activities, and in particular, the supervision of such activities. The actions of Dr. Kusmik, described above, were particularly serious since, as the RSO at the facility, Dr. Kusmik was charged with ensuring that Licensee staff adhered to requirements and performed activities in a safe manner. Rather than properly discharging those responsibilities, Dr. Kusmik set an unacceptable example for the individuals to whom he gave direction, as well as to others engaged in NRC-licensed activities at the facility.

While Dr. Kusmik did not cooperate during the OI investigation, he did provide information during the transcribed enforcement conference on June 7, 1994. Specifically, Dr. Kusmik stated that he: (1) directed an employee to falsify NRC-required wipe test records; and (2) provided false or misleading information to the NRC in a letter, dated September 21, 1992, in response to a Notice of Violation. The NRC recognizes Dr. Kusmik was candid and straightforward with the NRC when questioned during the enforcement conference. The NRC also recognizes that Dr. Kusmik was contrite and expressed remorse for his actions. However, Dr. Kusmik's actions cannot and will not be tolerated by the NRC. Consequently, I lack the requisite

reasonable assurance that information provided to the NRC by Dr. Kusmik, or required to be maintained by Dr. Kusmik or the Licensee, will be complete and accurate in all material respects, and that the health and safety of the public will be protected if Dr. Kusmik were permitted at this time to be an authorized user listed on any NRC license or act as an RSO.

Therefore, the public health, safety and interest require that Dr. Kusmik: (1) be prohibited from being an authorized user and from acting as an RSO for a period of one year from the date of this Order; (2) for a period of three years from the date of the Order, notify the NRC within 20 days of his acceptance of an employment offer involving NRC-licensed activities; and (3) Dr. Kusmik, within 30 days from the date of this Order, provide a statement of his commitment to comply with NRC requirements and the basis why the Commission should have confidence that he will comply with applicable NRC 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 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 and 10 CFR 30.10, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Dr. William F. Kusmik is prohibited from being an authorized user and from acting as an RSO on any NRC license for a period of one year from

the date of this Order. During this one-year period, an MRC licensee may allow Dr. Kusmik to perform NRC-licensed activities only if he is under the direct supervision of an authorized user as defined 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 granted by 10 CFR 150.20. During this time period, Dr. Kusmik must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities.

Supervision of Dr. Kusmik during this period shall be performed as follows:

1. The licensee must document the name of the authorized user responsible for supervising Dr. Kusmik's activities and ensuring compliance with all applicable NRC requirements.
2. The authorized user supervising Dr. Kusmik shall routinely observe and review all radiological safety records generated by Dr. Kusmik's activities. On monthly basis, records generated by Dr. Kusmik will be reviewed and initialed by the supervising authorized user to assure that the records are complete and accurate. Any record found not to be in accordance with NRC requirements shall be reported to the RSO.

3. The RSO shall:

- a. ensure and document that he/she has provided training to Dr. Kusmik on the License, its conditions, and all applicable NRC requirements including the Licensee's radiation safety procedures;
- b. perform documented audits of all NRC-licensed activities performed by Dr. Kusmik on quarterly basis; and
- c. review and institute corrective actions for any violations noted.

4. Records of NRC-licensed activities conducted by Dr. Kusmik must be retained until the next NRC inspection.

B. For a period of three years from the date of the Order, Dr. Kusmik shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.A 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.

C. Dr. Kusmik shall, within 30 days of the date of this Order, provide a statement to the Director, Office of Enforcement, U. S. Nuclear

Regulatory Commission, Washington, D.C. 20555, of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

- D. For purposes of this Order, an authorized user is a person who is listed on an NRC license as a user of, or is an individual who supervises other persons using, NRC-licensed material.

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

V

In accordance with 10 CFR 2.202, Dr. Kusmik 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. Kusmik 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, Pennsylvania 19406, and to Dr. Kusmik if the answer or hearing request is by a person other than Dr. Kusmik. If a person other than Dr. Kusmik 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. Kusmik 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. Kusmik, 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

A handwritten signature in cursive script, appearing to read "Hugh L. Thompson, Jr.", written in dark ink.

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

Dated at Rockville, Maryland
this 7th day of September 1994

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

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, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

IA 94-019

Larry S. Ladner

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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, 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

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

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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
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

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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, 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. 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
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.

Notice of Violation

2

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,

Mr. Sean G. Miller

- 2 -

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

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)
)

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. CECe 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 CECe 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, CECe notified the NRC that CECe 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 ONE 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. 20555-0001

IA 94-031

October 31, 1994

Thomas A. Nisbet
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC INVESTIGATION REPORT NO. 4-93-049)

Dear Mr. Nisbet:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because you engaged in deliberate misconduct, as defined in 10 CFR 30.10, during your employment with Western Industrial X-Ray Inspection Company, Inc.

The Order prohibits your involvement in NRC-licensed activities for a period of one year from the date of the Order. This means that you are prohibited from any direct involvement in supervising or performing activities that are regulated by the NRC, including conducting or supervising radiographic operations. This prohibition extends to performing these activities in NRC jurisdiction, including working in non-Agreement States on behalf of an Agreement State licensee.

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 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

Docket No. 030-32190
License No. 49-27356-01

Enclosure: As Stated

cc w/enclosure: State of Wyoming

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
THOMAS A. NISBET

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)

IA 94-031

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

I

Thomas A. Nisbet was employed as a Radiographer for Western Industrial X-Ray Inspection Company, Inc. (Licensee or WIX), Evanston, Wyoming, from May 1993 to June 1994, when the WIX license was suspended. WIX is the holder of 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 in suspension while a hearing requested by the Licensee is pending. On September 27, 1994, the NRC issued an immediately effective Order to WIX to transfer material in its possession. In a provision that is not effective immediately, the Order also revoked the WIX license.

II

Between January and June 1994, an inspection (030-32190/94-01) and an Office of Investigations (OI) investigation (4-93-049R) of licensed activities were conducted in response to allegations that Mr. Thomas A. Nisbet, a Radiographer formerly employed by WIX, had deliberately allowed a Radiographer's Assistant employed by WIX and working with him, to perform radiographic operations on July 31, 1993, without supervision, and that the Licensee deliberately failed to evaluate a July 31, 1993, potential overexposure incident involving the

Radiographer's Assistant. During the inspection and investigation, the Radiographer's Assistant informed the inspector and investigator that she and Mr. Nisbet falsified a written incident report provided to their employer that described the circumstances involving the potential overexposure incident. This potential overexposure incident occurred as the result of the Radiographer's Assistant not properly implementing radiography procedures while performing radiographic operations in that she failed to perform a survey to verify that the source was returned to its shielded position after a radiographic exposure was taken and she failed to lock the source in the exposure device prior to moving the device.

Based on its review of the available information, the NRC concludes that Mr. Nisbet violated provisions of 10 CFR 30.10, which prohibits individuals from deliberately causing a licensee to be in noncompliance with NRC requirements and from deliberately providing incomplete or inaccurate information to the NRC or to a licensee of the NRC which the individual knows is material in some respect to the NRC. Specifically, as discussed below in more detail, the NRC concludes that : 1) Mr. Nisbet deliberately failed to provide personal supervision of, including the failure to watch, his assistant, while she was performing radiographic operations on July 31, 1993, a violation of 10 CFR 34.44; and 2) Mr. Nisbet deliberately provided inaccurate information to the Radiation Safety Officer for WIX about the July 31, 1993, incident, a violation of 10 CFR 30.10.

During the inspection and investigation, Mr. Nisbet stated that he had allowed the Radiographer's Assistant to perform radiographic operations without his direct supervision. When questioned, Mr. Nisbet stated that he knew that allowing the Radiographer's Assistant to perform radiographic operations

without his supervision was a violation of NRC requirements; however, during subsequent questioning, Mr. Nisbet stated that he knew that he was responsible for the Radiographer's Assistant but he did not know that he had to watch her perform radiographic operations 100 percent of the time. Mr. Nisbet stated that he was performing paperwork in his truck during the time that the Radiographer's Assistant was potentially overexposed while performing radiographic operations on July 31, 1993. Mr. Nisbet stated that his written report of the incident which he provided to the President and Radiation Safety Officer for WIX was not completely true in that he did not actually observe the Radiographer's Assistant conduct radiography when the incident occurred.

During an enforcement conference that was held on August 30, 1994, Mr. Nisbet stated that he and other WIX radiographers had allowed their assistants to perform radiographic operations without being observed once they were confident that their assistants could perform radiographic operations without direct supervision. Mr. Nisbet stated that this was a common practice and that the WIX President and Radiation Safety Officer, Mr. Larry D. Wicks, had provided guidance to conduct radiography in this manner. Mr. Nisbet stated that he knew that there was an NRC regulation which required radiographers to supervise radiographer's assistants, but he did not know specifically what this supervision entailed and the guidance that he received from Mr. Wicks relative to this requirement was that he could perform dark room activities and complete paperwork while the Radiographer's Assistant conducted radiographic operations once he was confident that the assistant could perform radiography without direct supervision. Mr. Nisbet also stated that he felt pressured to allow the Radiographer's Assistant to perform radiographic operations without direct supervision or observation in order to meet the

schedule for accomplishing the number of contractually-specified daily radiographs.

Although 10 CFR 34.44 is explicit that personal supervision includes watching the radiographer's assistant's performance of operations, Mr. Nisbet stated that he was provided guidance by his employer that is contrary to the requirements of that regulation. However, improper direction from management does not excuse failure to comply with regulatory requirements.

The following considerations raise significant questions about Mr. Nisbet's willingness to comply with the NRC regulation that governs the supervision of Radiographers' Assistants:

1. Mr. Nisbet initially told the investigators that he did not watch the Radiographer's Assistant operate the exposure device for a particular weld (three exposures) on July 31, 1993, which he knew was a violation of NRC requirements.
2. Mr. Nisbet initially told the investigators that he had told the Radiographer's Assistant that she violated NRC regulations when she operated the exposure device on July 31, 1993, without him observing.
3. Mr. Nisbet falsified the written report that described the July 31, 1993, incident so that the report indicated that he was observing the Radiographer's Assistant at the time that the potential overexposure of the Radiographer's Assistant occurred.

4. The Radiographer's Assistant told the investigators that she agreed to falsify the incident report because, knowing it was a violation of NRC requirements for her to perform radiographic operations without being observed by Mr. Nisbet, she believed that he would be fired if Mr. Wicks knew that Mr. Nisbet was not supervising her while she was performing radiography.

Mr. Nisbet also told NRC personnel during the enforcement conference that he and the Radiographer's Assistant agreed, at the suggestion of the Radiographer's Assistant's spouse, who was also a WIX radiographer and Assistant Radiation Safety Officer, to provide a false account of how the potential overexposure incident occurred. Mr. Nisbet stated that the Radiographer's Assistant's spouse told him and the Radiographer's Assistant that they were likely to be fired if they told Mr. Wicks what actually transpired. Upon further questioning by the NRC personnel during the enforcement conference, Mr. Nisbet stated that he was not coerced into falsifying the written incident report and it was his decision to do so. Mr. Nisbet stated that after Mr. Wicks became aware of what actually occurred, Mr. Wicks told him that he would be fired if a similar incident occurred again.

Based on its review of the evidence gathered during the OI investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Nisbet deliberately failed to personally supervise the Radiographer's Assistant while she conducted radiographic operations on July 31, 1993, and that Mr. Nisbet deliberately provided false information to the Licensee regarding the July 31, 1993 incident.

III

Based on the above, Thomas A. Nisbet has engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 34.44. 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. Nisbet's actions in causing the Licensee to violate 10 CFR 34.44 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

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. Nisbet were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Thomas A. Nisbet be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order, and if he is currently involved with another NRC licensee in NRC-licensed activities, he must immediately cease those 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. Additionally, Mr. Nisbet 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. Nisbet's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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 Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Thomas A. Nisbet is prohibited for one year 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. The first time Mr. Nisbet is employed in NRC-licensed activities following the one-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 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. Nisbet of good cause.

In accordance with 10 CFR 2.202, Mr. Nisbet 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. Nisbet 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Nisbet if the answer or hearing request is by a person other than Mr. Nisbet. If a person other than Mr. Nisbet 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. Nisbet 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. Nisbet, 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 21st day of October 1994

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

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,

A handwritten signature of James Lieberman in cursive script.

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Richard E. Odegard

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IA 94-018

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.

V

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. 20555-0001

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

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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, 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.

V

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, Director
Office of Enforcement

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

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

OCT 27 1993

IA 93-002

Mr. George D. Shepherd
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

Dear Mr. Shepherd:

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

The enclosed Order is being issued because of your violations of 10 CFR §§ 30.10, 34.33(a), 34.42, and 34.43(b) of the Commission's regulations as described in the Order. Based on an investigation conducted by the NRC's Office of Investigations, the NRC staff has determined that you deliberately failed to wear an alarm ratemeter, failed to post boundaries, and failed to perform radiation surveys of the exposure device and guide tube, during the performance of radiographic operations on July 1, 1992, in violation of NRC requirements. Also, you encouraged a new assistant radiographer to discontinue using his alarm ratemeter. In addition to the Order, I have enclosed a copy of the synopsis of the investigation.

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: As stated

cc: All Agreement States
Western Stress, Inc.
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)

IA 93-002

George D. Shepherd

)

)

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

I

George D. Shepherd has been employed as a radiographer in the field of industrial radiography since 1980. On approximately June 15, 1992, Mr. Shepherd was hired by Western Stress, Inc. (WSI or Licensee). WSI holds Materials License No. 42-26900-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the conduct of industrial radiography activities in accordance with the conditions specified therein.

II

On July 1, 1992, NRC conducted a field inspection of WSI at the Hess Oil Refinery in St. Croix, U.S. Virgin Islands. During this inspection, Mr. Shepherd, who was the lead radiographer, and an assistant radiographer were observed performing radiographic operations without alarm ratemeters as required by 10 CFR 34.33(a). The violation was observed by the inspector as he entered the immediate vicinity of the work area. When Mr. Shepherd and the assistant radiographer observed the inspector, the assistant radiographer went to the work vehicle to get the

alarm ratemeters. The inspector also observed that the radiographers had not posted the restricted area during radiographic operations, as required by 10 CFR 34.42, nor had Mr. Shepherd performed a survey of the exposure device and source guide tube following each radiographic exposure, as required by 10 CFR 34.43(b). As a result of this inspection, a Notice of Violation and Proposed Imposition of a Civil Penalty was issued to WSI on July 30, 1992.

Between July 29, 1992 and April 30, 1993, an investigation was conducted by the NRC Office of Investigations (OI) to determine whether the conduct of Mr. Shepherd and the assistant radiographer was willful. Based on that investigation the NRC staff concludes that Mr. Shepherd deliberately and repeatedly violated the NRC requirement to wear an alarm ratemeter during radiographic operations and according to the testimony of the assistant radiographer, encouraged the assistant radiographer to discontinue using his alarm ratemeter. In addition, based on the investigation, the NRC staff concludes that on July 1, 1992, Mr. Shepherd deliberately violated the NRC posting and surveying requirements. Specifically, he was aware of the regulatory requirements to rope off and conspicuously post the area in which radiographic operations were being performed and to perform a radiation survey of the entire circumference of the exposure device and the source guide tube after each radiographic

exposure, and yet failed to meet the regulatory requirements of 10 CFR 34.43 and 10 CFR 34.42.

III

Based on the above, Mr. Shepherd engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 34.33(a), 34.43, 34.42, and 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to wear alarming ratemeters, to rope off and post the area of radiographic operations, and to perform post-exposure surveys. Compliance with NRC requirements as to posting and roping of radiation areas is necessary to protect members of the public, including licensee employees, from potential danger. Performance of a survey of the radiographic device after each exposure is an important safety requirement to prevent overexposures. Mr. Shepherd's deliberate actions in causing the Licensee to violate these requirements have raised serious doubts as to whether he can be relied on to comply with NRC requirements. Mr. Shepherd's deliberate misconduct 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. Shepherd were permitted at this

time to perform radiographic operations in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Shepherd be prohibited from performing or supervising licensed activities for either an NRC licensee or an Agreement State licensee (operating in areas of NRC jurisdiction in accordance with 10 CFR 150.20) for a period of two years from the date of this order. In addition, for a period of two years commencing after the two-year prohibition, Mr. Shepherd should be required to notify the NRC of his employment by any person (including any entity) engaged in licensed activities under an NRC or Agreement State license (where the work is performed in areas under NRC jurisdiction), so that appropriate inspections can be performed. During that same two-year period, Mr. Shepherd should also be required to provide a copy of this Order to any person employing him and who holds an NRC license or an Agreement State license and performs licensed activities in NRC jurisdiction. 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, 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. George D. Shepherd is prohibited for two years from the date of this Order from performing, supervising, or engaging in any way in licensed activities under an NRC license, or an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20.
2. For a period of two years commencing after the expiration of the two-year period of prohibition, George D. Shepherd 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, of his being employed to perform or supervise such licensed activities. Licensed activities include those performed for an NRC licensee or an Agreement State licensee doing work in areas of NRC jurisdiction. 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. In addition, for that same period of two years commencing after completion of the two-year period of prohibition, Mr. Shepherd shall provide a copy of this Order to his employer prior to performing licensed activities in areas of NRC jurisdiction

for any employer holding either an NRC license or an Agreement State license.

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

V

In accordance with 10 CFR 2.202, George D. Shepherd 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 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 George D. Shepherd 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 George D. Shepherd if the answer or hearing request is by a person other than George D. Shepherd. If a person other than George D. Shepherd 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 George D. Shepherd 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), George D. Shepherd, 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, Sr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this *27th* day of October 1993

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

JUN 23 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.

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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, 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, 161i, 161o, 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 4 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
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%, 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.

V

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
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 27th day of April 1994

B. MATERIALS LICENSEES, CIVIL PENALTIES AND ORDERS

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

November 15, 1994

EA 93-128

Amoco Oil Company
ATTN: R. B. Sheldon
Refinery Manager
2815 Indianapolis Blvd.
Whiting, Indiana 46394-0710

Dear Mr. Sheldon:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -
\$25,000 AND DEMAND FOR INFORMATION
(NRC INSPECTION REPORT NO. 030-04325/92001 AND
NRC INVESTIGATION REPORT NO. 3-92-035R)

This refers to the routine safety inspection conducted at the Amoco Oil Company Refinery, Whiting, Indiana, from September 15 to October 9, 1992, and the subsequent investigation by the Nuclear Regulatory Commission Office of Investigations (OI). Significant violations of NRC requirements were identified during the inspection and investigation and a meeting was held in the Region III Office on October 23, 1992, to discuss the NRC findings and the results of your internal investigation of the matter. A copy of the inspection report was mailed to you on November 23, 1992. A copy of the synopsis of the OI Report of Investigation is enclosed.

On July 27, 1992, Region III received an allegation that the Radiation Safety Officer (RSO) for the Whiting, Indiana, refinery had not conducted field audits of radiographers as required by a license condition and that he fabricated reports for the audits that he did not perform. The RSO admitted to OI during a sworn, transcribed interview on October 7, 1992, that he had not performed field audits because of constraints placed upon his time. In addition to being the RSO he was an inspection supervisor, an outage coordinator, and he was attending night school. He also admitted that he falsified records to show that audits had been performed. The investigation also established that on September 15, 1992, the RSO made false statements to the NRC inspector concerning the preannouncement of field audits. Additionally, the inspection identified a number of violations indicating that management oversight of the NRC licensed radiation safety program was lacking.

You subsequently notified the NRC that an Assistant Radiation Safety Officer (ARSO) also fabricated radiographer audit records either during or immediately following the September 15, 1992, NRC inspection. That ARSO admitted to you that he falsified audit records at the request of the RSO. The OI investigation also revealed that during August 1991 a second ARSO falsified radiographer audit records at the request of the RSO. The NRC notified you on September 8, 1994, of the second ARSO's involvement in falsifying records.

The NRC recognizes that immediate corrective actions were taken when the

violations were identified. Those actions included suspending operation of the NRC licensed radiography program and eventually terminating that license on October 19, 1993, and temporarily suspending the employment of the RSO and an ARSO then known to be responsible for the falsification of the audit records.

A Confirmatory Order Modifying License (Effective Immediately) was issued to Amoco on December 1, 1992, (EA 92-198) confirming that, among other things: Amoco would stop all NRC licensed radiographic operations; the RSO would no longer be involved in NRC licensed activities; Amoco would implement the controls necessary to track, schedule and document field audits of radiographers; and Amoco would perform an independent assessment of the radiation safety program at the Whiting refinery.

The violations are fully described in the attached Notice of Violation and Proposed Imposition of Civil Penalties. Violation I concerns deliberate violations of NRC requirements, including the failure to perform the required audits of radiographers and radiographer's assistants, the falsification of radiographer audit records by the RSO and ARSOs, and deliberate provision of false information by the RSO to the NRC and is categorized at Severity Level I, in accordance with 10 CFR Part 2, Appendix C, "Policy and Procedure for Enforcement Actions; Policy Statement" (Enforcement Policy), because Violation I addresses inaccurate or incomplete information that is provided to the NRC deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate. In accordance with the NRC Enforcement Policy an RSO is considered to be a licensee official.

Violation II pertains to a number of violations that in the aggregate represent a breakdown in the management of NRC licensed activities. Violation II consists of failure to: (a) survey the entire circumference of a radiographic exposure device; (b) secure the source in the shielded position after each radiographic exposure; (c) administer a written test or conduct field examinations prior to permitting an individual to work as a radiographer or radiographer's assistant; (d) observe the performance of radiographers and radiographer's assistants during actual radiographic operations; (e) use the NRC required Internal Inspection (Audit) Checklist during field audits of radiographers and radiographer's assistants; and (f) record the results of daily equipment checks. These violations are collectively categorized as a Severity Level III problem in accordance with the NRC Enforcement Policy.

Deliberate violations of NRC regulations and license conditions are of particular concern to the NRC because the regulatory program is based on the integrity of licensees and its employees. Such violations will not be tolerated by the Commission and must not be tolerated by a licensee. The deliberate violations committed by your RSO and two ARSOs are especially significant because each individual was responsible for not only the public health and safety, but also the health and safety of the employees at the Whiting, Indiana, refinery.

While willful violations by your employees are not acceptable, your lack of management support for radiation safety, as evidenced by the many previously

described duties assigned to the RSO outside of radiation safety, was a major factor contributing to these violations. The numerous duties and responsibilities of your RSO left very little time, if any, for him to perform the various responsibilities of RSO, and as a consequence, the field audits of radiographers and radiographer's assistants were not performed along with other required radiation safety activities. A lack of management oversight of the radiation safety program and the RSO was another contributing factor.

The NRC license granted Amoco Oil Company the authority to name and train its own users of byproduct material. The NRC entrusts responsibility for radiation safety to the management of your facility; therefore, the NRC expects effective management and oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety, including the health and safety of its employees, by assuring that all requirements of the NRC license are met and any potential violation of NRC requirements is identified and expeditiously corrected. The failure to adequately supervise your RSO and the NRC licensed program demonstrates that ineffective and insufficient management oversight of the implementation of the radiation safety program existed at the Whiting, Indiana, facility.

To emphasize the licensee's responsibility to properly manage and support licensed activities and the significant concern of the NRC regarding licensee supervisors' involvement in willful violations, I have been authorized, after consultation with the Commission, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the total amount of \$25,000 for the Severity Level I violation and the Severity Level III problem.

The base value of a civil penalty for a Severity Level I violation is \$10,000. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered. Violation I was escalated 50 percent for NRC identification and mitigated 50 percent for your good corrective action as discussed above. No mitigation for licensee performance was considered appropriate since the violation was willful. The violation also was escalated 100 percent for multiple occurrences. The base value of a civil penalty for a Severity Level III violation or problem is \$5,000. Application of the adjustment factors for the Severity Level III problem resulted in escalation of 50 percent for NRC identification and mitigation of 50 percent for your corrective action. No mitigation for licensee performance was considered appropriate since the violations reflect a substantial decline in performance. In both instances, the other factors were considered and no further adjustments were found appropriate. Therefore, based on the above, the base civil penalty for Violation I was raised to \$20,000, and the base civil penalty for the Severity Level III problem was not changed (\$5,000). The total amount of civil penalties is \$25,000.

Today, we are also issuing separate Orders Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) to the RSO and the ARSO involved in the deliberate violations in 1992. These individuals failed to audit radiographers and radiographer's assistants or were involved with the

falsification of audit records from February 1992 to September 1992 in violation of 10 CFR 30.10, "Deliberate Misconduct". For a period of three years for the RSO and one year for the ARSO from the date of the Order, each individual is: (1) prohibited from engaging in NRC-licensed activities and (2) following the period of prohibition, each individual shall notify the NRC within 20 days of acceptance of his first employment involving NRC-licensed activities.

Also being issued today is a letter to a second ARSO responsible for deliberate violations in August 1991. A letter, rather than an order, is issued to this individual because he falsified field audit records prior to the effective date of 10 CFR 30.10. Copies of each Order and the letter are also enclosed.

The refinery's NRC Byproduct Material License was terminated on October 19, 1993. Nevertheless, should Amoco Oil Company seek a NRC license for industrial radiography at Whiting, Indiana, or permit any of the three individuals to become involved in NRC-licensed activities under another NRC license issued to the Amoco Oil Company, in accordance with 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 and 10 CFR 30.34(e), Amoco Oil Company must notify the NRC within 20 days of the individual's appointment and respond, under oath or affirmation, to the following:

1. Identify the facility and NRC license under which the individual(s) will be working.
2. Describe the specific activities the individual(s) will be performing under the NRC license.
3. Describe the basis for which the Amoco Oil Company has concluded that the individual(s) will in the future comply with all NRC regulations and license conditions.

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. After reviewing your response to this Notice, the NRC will determine whether further NRC enforcement action is necessary.

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.

Should you have any questions regarding this matter, please contact Mr. Roy Caniano of the NRC Region III office (708-829-9500).

Sincerely,

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

Docket No. 030-04325
License No. 13-00155-10

Enclosures:

1. Copy of OI Report Synopsis
2. Notice of Violation
3. Order to Mr. Michael J. Berna
4. Order to Mr. Jeffrey DeArmond
5. Letter to Mr. Kenneth J. Vavrek

cc/enclosures
PUBLIC
State of Indiana

SYNOPSIS

On July 27, 1992, the U. S. Nuclear Regulatory Commission (NRC), Region III (RIII) Staff received information from an anonymous telephone caller that the Radiation Safety Officer (RSO) at the Amoco Oil Company (Amoco), Whiting, Indiana, refinery was routinely failing to conduct required unscheduled audits of radiographers' personal work performance. Furthermore, in an attempt to satisfy NRC license requirements, the RSO was allegedly falsifying audit records. A subsequent inspection by NRC:RIII Staff disclosed a number of apparent record keeping irregularities with regard to the unscheduled audits of radiographers. Additionally, during the course of a NRC:RIII inspection, the RSO falsely stated to the inspectors that the audits he was purportedly conducting of Amoco radiographers were unannounced.

Based on the evidence developed during the investigation, the Office of Investigations substantiated through witness testimony, documentary evidence, and admissions that the RSO and both Assistant RSOs had failed to conduct, on a regular basis, required unscheduled/unannounced audits and that the RSO and his Assistant RSOs had deliberately fabricated audit records of radiographers to meet the license requirement. Additionally, the RSO was found to have made a false statement to the NRC inspectors during the course of their inspection.

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

Amoco Oil Company
Whiting, Indiana

Docket No. 030-04325
License No. 13-00155-10
EA 93-128

During an NRC inspection conducted from September 15 to October 9, 1992, and during a subsequent investigation, 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 Nuclear Regulatory Commission proposes to impose civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalties are set forth below:

I. Willful violation of NRC requirements

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

Condition 18.A of License No. 13-00155-10, in effect at the times stated below, incorporated the statements, representations, and procedures contained in the license application dated March 28, 1990. Item 10.3 of that license application requires, in part, that practicing radiographers and radiographer's assistants are to be audited at intervals not to exceed 3 months and the audits should be unannounced insofar as possible. Item 10.5 of that application requires, in part, that a record of quarterly audits of radiographers and radiographer's assistants be generated and maintained.

Contrary to the above, the licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically:

- A. On at least 10 occasions (February 6, 10, 12 and 29, April 11, 22, 24, and 29, May 12, and September 1, 1992), the licensee's radiation safety officer did not perform the audits of radiographers and radiographer's assistants and falsely prepared records for those dates indicating the audits had been performed.
- B. On or about September 15, 1992, the licensee's radiation safety officer and an assistant radiation safety officer falsified the record of quarterly audits of radiographers and radiographer's for audits which were purportedly conducted during May 1992 and the audits had not been performed.
- C. During August 1991, another assistant radiation safety officer falsified two records of quarterly audits of radiographers and radiographer's assistants by indicating that the audits had been performed when in fact the audits had not been done.

- D. During the September 15, 1992 inspection, the NRC inspector asked the radiation safety officer if field audits of radiographers and radiographer's assistants were announced. The radiation safety officer told the NRC inspector that he did not give any advance notification to radiography personnel. However, eight radiographers or radiographer's assistants stated that the radiation safety officer always preannounced when he would be performing an audit.

This information was material because representations from the radiation safety officer are relied upon and internal audit records are reviewed by NRC inspectors to help them assess whether licensed activities are performed in accordance with NRC regulations and license conditions. (01011)

This is a Severity Level I violation (Supplements VI and VII).
Civil Penalty - \$20,000.

II. Violations Associated with Oversight of the Radiation Safety Program

- A. 10 CFR 34.43(b) requires, in part, the licensee to ensure that a survey with calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on October 9, 1992, at the Amoco Oil Company Whiting, Indiana, refinery, a licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position, in that the survey did not include the entire circumference of the radiographic exposure device. (02013)

- B. 10 CFR 34.22(a) requires, in part, that during radiographic operations, the sealed source assembly be secured in the shielded position each time the source is returned to that position.

Contrary to the above, on October 9, 1992, a licensee radiographer did not secure the sealed source assembly in the shielded position after returning the source to the shielded position at the termination of a radiographic exposure. Specifically, the radiographer did not depress the lock on the Amersham Model T/O 660 exposure device lock assembly after rotating the selector ring to the lock position. (02023)

- C. 10 CFR 34.31(a) requires that the licensee not permit any individual to act as a radiographer until such individual has demonstrated understanding of: the instructions in the subjects outlined in Appendix A of 10 CFR Part 34; NRC regulations contained in 10 CFR Part 34 and in the applicable sections of 10

CFR Parts 19 and 20; the NRC license under which the radiographer will perform radiography; and the licensee's operating and emergency procedures. This is demonstrated by the successful completion of a written test and field examination on the subjects covered.

Contrary to the above, on February 19 and 20, 1992, the licensee permitted an individual to act as a radiographer before the individual had demonstrated understanding of the instructions specified above by the successful completion of a written test and field examination on the subjects covered. Specifically, the individual acted as a radiographer and the licensee had not administered a written test and field examination, as required. (02033)

- D. 10 CFR 34.31(b) requires that the licensee not permit any individual to act as a radiographer's assistant until such individual; has received copies of and instruction in the licensee's operating and emergency procedures; has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and has demonstrated understanding of the instructions in this paragraph by successfully completing a written or oral test and field examination on the subjects covered.

Contrary to the above, on February 19, 20, and October 9, 1992, the licensee permitted an individual to act as a radiographer's assistant without the above requirements being fulfilled, in that the licensee had not conducted a field examination of the individual. (02043)

- E. 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.

Condition 18.A of former License No. 13-00155-10 incorporates the statements, representations, and procedures contained in the license application dated March 28, 1990 (received by the NRC on September 24, 1990). Item No. 10.3b of that application requires, in part, that in the event a radiographer or radiographer's assistant does not perform radiography for a period that exceeds 3 months, that person will be audited the next time he/she engages in radiographic activities.

Contrary to the above, the licensee had not observed the performance of radiographers and radiographer's assistants involved in radiographic operations at intervals not to exceed

three months. Specifically, on 18 days during the months of June, July, and August 1992, six radiographers and two radiographer's assistants conducted radiographic operations and it was greater than three months since the licensee had last audited their performance of actual radiographic operations. (02053)

- F. Condition 18 of former License No. 13-00155-10 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated March 28, 1990, (received by NRC on September 24, 1990) and letter dated September 21, 1990.

Item 10.3 of the section of this application entitled, "Internal Inspection (Audit) Program", requires the licensee to use Exhibit 2, "Internal Inspection (Audit) Checklist" for the audit of radiation safety performance of a radiographer or a radiographer's assistant.

Contrary to the above, during the months of February to August, 1992, the licensee did not use Exhibit 2, "Internal Inspection (Audit) Checklist" for the audit of radiographers and radiographer's assistants. Specifically, the licensee's Radiation Safety Officer used a different report form that omitted safety performance items, including: verification that the equipment was inspected prior to use, observation of personnel patrolling the perimeter of the restricted area, observation of proper surveys after each radiographic exposure, and observation of locking of the radiographic exposure device after each exposure of the source. (02063)

- G. Condition 18 of former License No. 13-00155-10 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated March 28, 1990, (received by NRC on September 24, 1990) and letter dated September 21, 1990.

Item 10.5 of the section of this application entitled "Maintenance of Records," requires Licensee radiographic personnel to generate certain records, including "Sign-out logs of radiographic devices from source storage room including daily inspection checklist". The "Radioactive Material Removal and Storage Log" was submitted as Exhibit 13 of the license application and is designed to record the results of the daily inspection of equipment.

Contrary to the above, on February 1 and 6, March 30, April 23 and 24, June 10, 15, 18, and 24, and July 23, 1992, licensee personnel did not record the results of daily equipment checks on the Radioactive Material Removal and Storage Log. (02073)

This is a Severity Level III problem (Supplement VI).
Civil Penalty - \$5,000.

Pursuant to the provisions of 10 CFR 2.201, Amoco Oil Company (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) 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 the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalties by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalties proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalties will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties due which subsequently have been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalties, unless

compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalties, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532.

Dated at Rockville, Maryland
this *Sek* day of November 1994

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

JUN 21 1994

Docket No. 030-29025
License No. 37-20935-01 (expired)
EA 94-93

Brian A. Clark
1608 Adams Avenue
Dunmore, Pennsylvania 18509

Dear Mr. Clark:

SUBJECT: ORDER TO TRANSFER BYPRODUCT MATERIAL TO AN AUTHORIZED RECIPIENT
(EFFECTIVE IMMEDIATELY) AND DEMAND FOR INFORMATION

The enclosed Order, which is effective immediately, is being issued to require you to transfer byproduct material (a Troxler Gauge Model 3216 containing a 40 millicurie americium-241 source) in your possession to an authorized recipient within 45 days of the date of this Order. If you do not believe that you have sufficient funds to pay for the transfer, you must provide information necessary to support such claim, as described in Section III of the enclosed Order. Once the transfer of material has been confirmed, the NRC will terminate License Number 37-20935-01 and will inform you in writing of the formal termination.

The Order also provides that: (1) if the source has not been leak tested within the last six months, prior to transfer of the source, you will have the source tested for leakage by a person authorized to perform the test; (2) prior to transfer, you must continue to maintain safe control over the byproduct material by keeping it in locked storage; (3) no use of the byproduct material is authorized; (4) unless the source already has been transferred, you will provide a written update to the NRC of your progress in finding an authorized person to receive and possess the byproduct material; (5) you will notify the NRC by telephone at least two working days prior to the actual transfer; and (6) you will certify to the NRC, under oath or affirmation, that the byproduct material has been transferred to an authorized recipient within seven days after such transfer. Unless the Order is relaxed in writing, you must comply with it.

This Order is being issued to you because you are in possession of byproduct material under a license that had expired. You previously had obtained the gauge under NRC License No. 37-20935-01 while you were the President and Owner of August Corporation. However, the license issued to August Corporation expired on November 30, 1990, and we understand that August Corporation is now defunct. Nonetheless, you still have possession of the gauge, even though you have not sought a license to possess it and you have been reminded repeatedly by the NRC to obtain a license or transfer the gauge to an authorized recipient, as evidenced in Section II of the Order. The dissolution of the

August Corporation does not obviate the requirement that you take immediate action to transfer the byproduct material in your possession to an authorized recipient.

In addition, in light of your continued possession of the gauge without an NRC license, and without seeking a license to do so, you are in deliberate noncompliance of NRC requirements. Therefore, to determine whether additional enforcement action is warranted to further limit your involvement in NRC licensed activities, a Demand for Information (DFI) is being issued with the Order.

The issuance of this Order does not preclude you from being subject to civil and criminal sanctions for the violation underlying this Order. In addition, violation of this Order may also subject you to civil penalties or criminal sanctions under the Atomic Energy Act.

You are required to abide by the applicable provisions of 10 CFR Part 20 while you maintain NRC-licensed material in locked storage. Your possession of the byproduct material without a valid license continues to be a violation of the Atomic Energy Act of 1954, as amended, and NRC regulations.

If you have any questions concerning this Order and DFI, please contact James Lieberman, Director, Office of Enforcement, 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.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosure:
Order to Transfer Byproduct Material
to an Authorized Recipient (Effective Immediately)
and Demand for Information

cc w/encl:
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

BRIAN A. CLARK
Dunmore, Pennsylvania

)
) Docket No. 030-29025
) License No. 37-20935-01 (expired)
) EA 94-093

ORDER TO TRANSFER LICENSED MATERIALS
(EFFECTIVE IMMEDIATELY)
AND
DEMAND FOR INFORMATION

I

Brian A. Clark was the President and Owner of August Corporation (Licensee), the holder of expired Byproduct Materials License No. 37-20935-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on November 15, 1985. The License authorized the possession and use of an americium-241 sealed source, not to exceed 44 millicuries, in a Troxler Electronics Labs gauge, in accordance with the conditions specified therein. The License expired on November 30, 1990, and the NRC has been informed by Mr. Clark that August Corporation is now defunct. Since the expiration of the License, the byproduct material has remained in the possession of Mr. Clark at his residence at 1608 Adams Avenue, Dunmore, Pennsylvania, 18509.

II

The Licensee did not submit an application for renewal of the License under 10 CFR 30.37 prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Although Mr. Clark stated his intentions, in a telephone conversation he initiated with Mr. William Oliveira, Health Physicist, NRC, Region I, on December 27, 1991, to obtain a license in his name, as of this

date, Mr. Clark has not applied for, nor obtained, an NRC license.

On February 24, 1992, the NRC, Region I, issued a Notice of Violation (NOV) to the August Corporation for failure to request renewal, or to file a notice of non-renewal or transfer of the byproduct material, prior to expiration of the License. The letter forwarding the NOV directed the Licensee to place the gauge in secure storage and not to use the material until the Licensee obtained a new NRC license. Neither the Licensee nor Mr. Clark responded to the Notice of Violation, even though Mr. Clark was again telephonically contacted by Mr. Charles Amato, Health Physics Inspector, NRC, Region I, on December 29, 1992, and informed that he was illegally possessing radioactive material, had not responded to the Notice of Violation, and enforcement action could be taken. Although Mr. Clark again stated that he wanted to obtain a license in his name, he has not applied for an NRC license.

In addition, in a July 1, 1993 letter, the NRC again reminded Mr. Clark of the need to respond to the NRC Notice of Violation. Further, Ms. Sharon Johnson, Administrative Assistant, NRC, Region I, in a telephone conversation that Mr. Clark initiated on February 25, 1994, and telephone conversations that Ms. Johnson initiated on March 15, 1994, and March 28, 1994, reminded Mr. Clark of his possession of NRC-licensed material without a license. Mr. Herbert Kaplan, Senior Reactor Engineer, NRC, Region I, discussed the same issue in a subsequent telephone conversation that he initiated on April 28, 1994. To date, Mr. Clark still possesses the gauge without an NRC license and without applying for such a license.

III

Mr. Clark remains in possession of NRC-licensed radioactive material without a license. This is prohibited by Section 81 of the Atomic Energy Act of 1954, as amended, and by 10 CFR 30.3, which state that, except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general NRC license.

Furthermore, based on the above, Mr. Clark has deliberately violated NRC requirements by possessing the gauge without a license. This conclusion is based on the facts that Mr. Clark never filed a renewal application before the License issued to August Corporation expired on November 30, 1990, as required by 10 CFR 30.37; Mr. Clark has not responded to an Inquiry Letter (No. 90-001) dated November 28, 1990, sent by the NRC before the License expired; Mr. Clark has not responded to the NRC Notice of Violation issued on February 24, 1992; Mr. Clark has not responded to an NRC letter, via "CERTIFIED MAIL" dated July 1, 1993, addressing his previous failure to respond to the Notice of Violation; Mr. Clark has refused to dispose of the radioactive material; Mr. Clark possesses the radioactive material contrary to 10 CFR 30.3, without a valid NRC specific license; and Mr. Clark has stated to the NRC on numerous occasions that he wants an NRC license (in his own name), but has not applied for such a license.

Improper handling of the gauge can result in an unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that material possessed by the Licensee be under a regulated system of licensing and inspection. Mr. Clark's possession of NRC-licensed material

without a valid NRC license, as documented in the February 24, 1992 Notice of Violation, and his unwillingness to respond to numerous NRC written and verbal communications to apply for an NRC license, demonstrate a deliberate disregard for NRC requirements. Mr. Clark, by continuing to possess material after being notified of the expiration of the License, has demonstrated that he is not willing to comply with Commission requirements.

Given the circumstances surrounding Mr. Clark's possession of the byproduct material and his lack of communications with the NRC, I lack the requisite reasonable assurance that the health and safety of the public will be protected while Mr. Clark remains in possession of the radioactive material. Consequently, the public health, safety, and interest require the imposition of the requirements set forth in Section IV below. Furthermore, pursuant to 10 CFR 2.202, I have determined that the significance of Mr. Clark's actions described above, (specifically, the deliberate possession of licensed material without a License, after repeated NRC notification of the need to either obtain a license or transfer the material to an authorized recipient) 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 at 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. The americium-241 source in Mr. Clark's possession shall be transferred to a person authorized to receive and possess the source within 45 days of the date of this Order. If Mr. Clark believes he does not have sufficient funds to complete the transfer, he must provide, within 30 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (1) an estimate of the cost of the transfer and the basis for the estimate, including the license number and identity of the person who would perform the transfer, (2) written statements from at least two banks stating that Mr. Clark could not qualify for a loan to pay for the transfer, (3) copies of Federal income tax returns for the years ending 1993, 1992, 1991, and 1990, for Mr. Clark, and (4) a signed agreement to allow the NRC to receive Mr. Clark's credit information from a credit agency. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.
- B. The americium-241 source shall be tested for leakage by a person authorized to perform the test prior to transfer of the source to another person, if a leak test has not been performed within the last six months prior to transfer.
- C. Mr. Clark continue to maintain safe control over the gauge containing the source, by keeping the source in locked storage and not allowing any

person access to the source until the source is leak tested and transferred to a person authorized to receive and possess the source in accordance with the provisions of this Order.

- D. Mr. Clark ensure that there is no use of the americium-241 source, except for performance of the pre-transfer leak test and transfer to an authorized recipient.
- E. Unless the source already has been transferred, Mr. Clark shall provide a written update within 30 days of receipt of this Order to the Regional Administrator, Region I, and the Director, Office of Enforcement, on Mr. Clark's progress in finding an authorized person to receive and possess the source.
- F. Mr. Clark shall notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone at least two working days prior to the date of the transfer of the source so that the NRC may, if it elects, observe the transfer of the source to the authorized recipient.
- G. Mr. Clark, within seven days following completion of the transfer, shall provide to the Regional Administrator, Region I: (1) confirmation in writing and under oath (NRC Form 314) that the americium-241 has been transferred, (2) a copy of the leak test performed prior to the transfer, and (3) a copy of the certification from the authorized recipient that the source has been received.

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

V

In accordance with 10 CFR 2.202, Mr. Clark 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. 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 set forth the matters of fact and law on which Mr. Clark or other person adversely affected relies and the reasons 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 I, 475 Allendale Road, King of Prussia, PA, 19406, and to Mr. Clark if the answer or hearing request is by a person other than Mr. Clark. If a person other than Mr. Clark 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. Clark 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. Clark, 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 REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

VI

In addition to issuance of this Order, the Commission requires further information from Mr. Clark in order to determine whether the Commission can have reasonable assurance that in the future, should Mr. Clark perform licensed activities under any other NRC license, Mr. Clark will conduct any NRC licensed activity in accordance with NRC requirements, and whether enforcement action is warranted against Mr. Clark, individually.

Accordingly, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commissions's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), you are hereby required to submit to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, within 30 days of the date of this Order and Demand for Information, a statement in writing, under oath or affirmation, of:

1. Why the NRC should have confidence that you will comply with NRC requirements in the event that you perform licensed activities under another NRC license.
2. Why, in light of the facts set forth above, the NRC should not issue an Order to you prohibiting you from engaging in NRC-licensed activities.

This information is needed in light of the deliberate violations of Commission requirements. Copies of the response to this Demand for Information also shall be sent to the Assistant General Counsel for Hearings and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

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After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

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 22 day of June 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

November 4, 1994

EA 94-093

Mr. Brian A. Clark
August Corporation
1608 Adams Avenue
Dunmore, Pennsylvania 18509

SUBJECT: NOTICE OF TERMINATION OF LICENSE

Dear Mr. Clark:

Enclosed is a Notice of Termination of License to Byproduct Material License No. 37-20935-01 (License). The License is being terminated because of: (1) the defunct status (as indicated by information provided by you) of the August Corporation to which the License was issued; and (2) the licensee's failure to notify the Commission promptly, in writing, and request termination of the License when the August Corporation decided to terminate all activities involving materials authorized under the License.

On June 21, 1994, the NRC issued to you an Order and a Demand for Information because of your unauthorized possession of byproduct material. The Order required you, in part, to transfer the byproduct material in your possession to an authorized recipient within 45 days. While you did not transfer the NRC-licensed material within the timeframe required by the Order, you did transfer it to an authorized recipient on August 24, 1994, approximately 63 days after the date of the Order. Normally, escalated enforcement action would be taken based on violations of 10 CFR 30.3 and 10 CFR 30.36.

However, based on your response to the June 21, 1994 Demand for Information and on your telephone conversation on October 19, 1994, with Ms. Patricia Santiago, Assistant Director for Materials, NRC Office of Enforcement, in which you stated that it has been years since the last date of use of material, the staff is issuing this Notice of License Termination and is not issuing you an Order prohibiting you in the future from engaging in NRC-licensed activities. In the future, should you, Mr. Brian Clark, engage in NRC-licensed activities, you should be prepared to demonstrate, pursuant to 10 CFR 30.32(b): (1) your financial ability to safely perform NRC-licensed activities and pay the required fees if you are the licensee, and (2) that you will conduct NRC-licensed activities in accordance with NRC requirements.

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.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brian A. Clark

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Should you have any questions regarding this matter, please contact Dr. Ronald Bellamy of my staff (610-337-5200).

Sincerely,

Charles W. Hehl, Director
Division of Radiation Safety and
Safeguards

Enclosure: Notice of Termination

Docket No. 030-29025
License No. 37-20935-01 (Expired)

ENCLOSURE

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

August Corporation
Dunmore, Pennsylvania

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Docket No. 030-29025
License No. 37-20935-01 (Expired)
EA 94-093

NOTICE OF TERMINATION OF LICENSE

I

August Corporation holds byproduct License No. 37-20935-01, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on November 15, 1985. The License authorized the Licensee possession and use of an americium-241 sealed source, not to exceed 44 millicuries, in a Troxler Electronics Lab gauge, in accordance with the conditions specified therein. The License expired on November 30, 1990. Brian A. Clark was listed as the Radiation Safety Officer (RSO) and sole authorized user on NRC License No. 37-20935-01 (License) issued to the August Corporation (Licensee), which was located in Scranton, Pennsylvania. Brian A. Clark was also the president and owner of the August Corporation, which is now defunct according to information provided by Mr. Clark during a February 26, 1994 telephone conversation with Ms. Sharon Johnson, Administrative Assistant, NRC Region I.

II

The Licensee did not submit an application for renewal, under 10 CFR 30.37, of the License prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Although Mr. Clark stated his intentions, in a telephone conversation with Mr. William Oliveira of the NRC on December 27, 1991, to obtain a license in his name, Mr. Clark has not applied for, nor obtained, an NRC license. In addition, on February 24, 1992, the NRC Region I issued a Notice of Violation (NOV) to the August Corporation, 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 NOV directed the Licensee to place the gauge

in secure storage and not to use the material until the Licensee obtained a new NRC license. Neither the Licensee nor Mr. Clark responded to the NOV, even though Mr. Clark was again contacted by Mr. Charles Amato, Health Physics Inspector, NRC Region I, on December 29, 1992, and was informed that he was illegally possessing radioactive material, had not responded to the NOV, and enforcement action could be taken. Although Mr. Clark again stated that he wanted to obtain a license in his name, he did not apply for an NRC license. In addition, in a letter, dated July 1, 1993, the NRC again reminded Mr. Clark of the need to respond to the NOV. Further, Ms. Sharon Johnson, Administrative Assistant, NRC Region I, in telephone conversations with Mr. Clark on February 25, 1994, March 15, 1994, and March 28, 1994, reminded Mr. Clark, of his possession of material with an expired license. Mr. Herb Kaplan, Reactor Engineer, NRC Region I, did the same in a subsequent telephone conversation on April 28, 1994.

In view of the circumstances, the NRC issued an Order and Demand for Information to Mr. Clark on June 21, 1994. The Order required, in part, that Mr. Clark transfer the gauge to an authorized recipient within 45 days of the date of that Order. Mr. Clark responded to the Order and Demand for Information by three written communications. Specifically, on August 11, 1994, Mr. Clark informed the NRC that the gauge would be transferred on August 12, 1994, to Pennsylvania Testing Laboratories; on August 13, 1994, Mr. Clark informed the NRC that the transfer of the gauge had been delayed because the leak test results of the gauge were not in Mr. Clark's possession prior to the transfer; and on September 20, 1994, Mr. Clark informed the NRC that the gauge had been transferred to Pennsylvania Testing Laboratories. In a letter sent to the NRC on September 15, 1994, Pennsylvania Testing Laboratories stated that it purchased the byproduct material contained in the gauge from Mr. Clark on August 24, 1994. Based on the above, the byproduct material was transferred to an authorized recipient on or about August 24, 1994, approximately 63 days after the date of the Order. In addition, Ms. Patricia Santiago, Assistant Director for Materials, NRC Office of Enforcement, contacted Mr. Clark on October 19, 1994, to determine the last date the gauge was used. During the telephone conversation with Ms. Santiago, Mr. Clark stated that the gauge had not been used for years.

Enclosure

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III

Accordingly, given the defunct status of the Licensee, the transfer of the byproduct material, and the Licensee's failure to submit a renewal application, License No. 37-20935-C1 is hereby terminated.

FOR THE NUCLEAR REGULATORY COMMISSION

Charles W. Hehl, Director
Division of Radiation Safety and
Safeguards

Dated at King of Prussia, Pennsylvania
this 4th day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

November 22, 1994

EA 94-227

Harman Mining Corporation
ATTN: Mr. Henry Cook, Jr.
President
P. O. Box 60
Harman, Virginia 24618

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$250
(NRC INSPECTION REPORT NO. 999-90002/94-05)

Dear Mr. Cook:

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Ms. Andrea Jones of this office on October 18 and 19, 1994, and subsequent telephone conversations and records reviews through November 2, 1994. The inspection included a review of activities at your Harman, Virginia facility authorized under a general license issued under 10 CFR 31.5. Based on the results of the inspection, a violation of NRC requirements was identified. The report documenting this inspection was sent to you by letter dated November 7, 1994. An enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on November 15, 1994 to discuss the violation, its cause, and your corrective actions to preclude recurrence. A list of enforcement conference attendees and a copy of the NRC presentation notes are enclosed.

The violation described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involved a failure to comply with the requirements of 10 CFR 31.5 during transfer of a Kay-Ray 7063P density gauge containing 200 millicuries of cesium-137. 10 CFR 31.5 requires, in part, that a device containing byproduct material be transferred or disposed of only by transfer to a person holding a specific license to receive the device. Harman Mining Corporation failed to control the Kay-Ray 7063P density gauge which resulted in its inadvertent removal from your Harman, Virginia facility. The NRC found that between June 28 and June 30, 1994, during dismantling of your coal preparation plant, L&G Salvage Company, a company hired by you to dismantle the preparation plant, contracted with Par Industries, an independent salvaging company located in Nitro, West Virginia, to haul away scrap metal from your dismantled plant. Portions of the scrap material were taken to Mansbach Metal Company (Mansbach), a metal recycling company, located in Ashland, Kentucky. The scrap material taken to Mansbach apparently included the Kay-Ray 7063P density gauge. L&G Salvage, Par Industries and Mansbach did not hold a specific NRC license to possess byproduct material, and you did not meet the requirements of 10 CFR 31.5(c)(9) to transfer the byproduct material to a general licensee. Mansbach identified the byproduct material in shredded material leaving their site. The root causes of the violation were Harman Mining Corporation's failure to control the device and to maintain records of the device.

The NRC expects all general licensees involved in the use of devices containing byproduct material to implement effective control of these devices. Adherence to these requirements is essential to ensure that the health and safety of your employees and the public is protected. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, this violation has been categorized at Severity Level III.

The byproduct material was recovered on July 9-10, 1994 by Scientific Ecology Group (SEG) of Oak Ridge, Tennessee under contract to Mansbach. Mansbach also provided for the safe storage and transfer of the material to an authorized user. The NRC understands that your corrective actions for the violation included a review of the current program for control of byproduct material at your Harman, Virginia facility. This program, which was inspected by the NRC, contained appropriate provisions for control of the gauge you currently own and for training of personnel in the use, handling and storage of the gauge.

To emphasize the importance of management oversight and adequate control of byproduct material, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the amount of \$250 for the Severity Level III violation. The base value of a civil penalty for a Severity Level III violation is \$500. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows.

Escalation of 50 percent was applied for the factor of identification. The violation was identified by the company that received the byproduct material. Since the corrective actions to recover the byproduct material were performed by SEG and without your assistance, no mitigation was warranted for the corrective action factor. The base civil penalty was mitigated 100 percent for the factor of licensee performance because you demonstrated that you handled other gauges containing byproduct material at your facility appropriately, and you had no previous violations in this area. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the base civil penalty has been mitigated by 50 percent.

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. 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, its enclosures, 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. However, if you find it necessary to include such information, you should clearly indicate the

specific information you believe should 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 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.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No.: General License
(10 CFR 31.5)
License No.: 999-90002
EA 94-227

Enclosures: 1. Notice of Violation and Proposed
Imposition of Civil Penalty
2. List of Enforcement Conference Attendees
3. NRC Presentation Notes

cc w/encls:
Commonwealth of Virginia
State of Kentucky

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Harman Mining Corporation
Harman, Virginia

Docket No. 999-90002
General License (10 CFR 31.5)
EA 94-227

During an NRC inspection conducted between October 18 and 19, 1994 and records reviews conducted through November 2, 1994, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall, except as provided in 10 CFR 31.5(c)(9), transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device.

Contrary to the above, between April 15, 1994 and June 30, 1994, the licensee transferred a Kay-Ray 7063P, density detector containing byproduct material (200 millicuries of cesium-137) to companies that did not hold a specific license to receive the device. Specifically, the licensee transferred the device through L&G Salvage Company and Par Industries to Mansbach Metal Company, a metal recycling company, located in Ashland, Kentucky. L&G Salvage Company, Par Industries and Mansbach Metal Company did not hold a specific NRC license to receive the device pursuant to 10 CFR Parts 30 and 32 of this chapter or from an Agreement State; and the licensee did not meet the conditions of 10 CFR 31.5(c)(9) for transfer to a general licensee. (01013)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$250

Pursuant to the provisions of 10 CFR 2.201, Harman Mining Corporation (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) 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 the license

Enclosure 1

Notice of Violation and Proposed
Imposition of Civil Penalty

2

should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323.

Dated at Atlanta, Georgia
this 22nd day of November 1994

LISTING OF ENFORCEMENT CONFERENCE ATTENDEES

Nuclear Regulatory Commission

Luis A. Reyes, Deputy Regional Administrator, Region II
Carolyn F. Evans, Regional Counsel, RII
J. Philip Stohr, Director, Division of Radiation Safety and
Safeguards (DRSS)
Charles M. Hosey, Chief, Nuclear Materials Inspection Section, DRSS
Andrea R. Jones, Radiation Specialist, DRSS
Linda J. Watson, Enforcement Specialist, Enforcement and Investigation
Coordination Staff
Debra L. McCain, Licensing Assistant, OLB, Office of Nuclear Reactor
Regulation

Harmon Mining Corporation

Henry Cook, Jr., President, Harman Mining Corporation
Thornton L. Newlon, Counsel, Harman Mining Corporation

Enclosure 2

ENCLOSURE 3

NRC' PRESENTATION NOTES

PROPOSED ENFORCEMENT CONFERENCE AGENDA

Harman Mining Corporation

NRC Region II Office, Atlanta, Georgia

Tuesday, November 15, 1994 at 10:30 A.M.

I. Opening Remarks	NRC
II. NRC Enforcement Policy and Procedure	NRC
III. Discussion of NRC Concerns	NRC
IV. Inspection Findings and Apparent Violations	NRC
V. Causes of Apparent Violations and
Corrective Actions	Licensee
VI. Closing Comments	NRC and Licensee

Enclosure 3

ISSUES TO BE DISCUSSED

Harman Mining Corporation, Harman, Virginia

10 CFR 31.5(c)(8) requires, in part, that any person who (possesses) material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by transfer to a person holding a specific license pursuant to 10 CFR Parts 30 and 32 of this chapter or from an Agreement State to perform such activities.

Between April 15, 1994 and June 30, 1994, the licensee transferred a Kay-Ray 7063P, density detector containing 200 millicuries of cesium-137 to L & G Salvage Company, and this transfer was not made to a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device, and the exceptions of 10 CFR 31.5(c)(9) did not apply.

NOTE: The apparent violations discussed in this enforcement conference are subject to further review and are subject to change prior to any resulting enforcement action.

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

AUG 02 1994

Docket No. 030-15075
License No. 20-05520-05 (Expired)
EA 94-124

Mr. Milton R. Hamilton
Mr. Raymond Tarr
Omniwave Electronics Corporation
RCM Corporation
Cherokee Electronics Corporation
Post Office Box 660
22 Blackburn Drive
Gloucester, Massachusetts 01930

Dear Messrs. Hamilton and Tarr:

SUBJECT: ORDER TO CEASE AND DESIST USE AND POSSESSION OF REGULATED BYPRODUCT
MATERIAL AND DECOMMISSION FACILITY AND DEMAND FOR INFORMATION

The enclosed Order to Cease and Desist Use and Possession of Regulated Byproduct Material and Decommission Facility and Demand for Information (Order and DFI) is being issued to inform you that you are in continuous violation of NRC requirements by possessing byproduct material with an expired license. You previously had obtained the byproduct material under NRC License No. 20-05520-05, issued to Omni-Wave Electronics Corporation (Omni-Wave) on November 15, 1985. However, the license issued to Omni-Wave expired on April 30, 1990. You have been reminded by the NRC to obtain a license or transfer this material to an authorized recipient, as evidenced in Section II of the enclosed Order and DFI.

We understand that Omni-Wave is no longer a viable corporate entity. This does not obviate the requirement that you, as the successors of interest in Omni-Wave, have the responsibility to take immediate action to transfer the byproduct material in your possession to an authorized recipient and decommission your facility pursuant to 10 CFR 30.36. Apart from any past relation to Omni-Wave, you as owners of the Blackburn property are in possession of radioactive material in violation of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR 30.3. Therefore, you are individually subject to the jurisdiction of the Commission and are responsible for the material in your possession.

I have determined that immediate action is needed to protect the public health and safety by requiring the material to be placed in possession of a person authorized by the Commission. Accordingly, you must cease and desist from possession of the material and are required to: (1) within 30 days of the date of this Order and DFI, transfer the remaining byproduct material (canisters containing krypton-85 gas, switches containing krypton-85 and

cobalt-60, and radioactive waste) in your possession to an authorized recipient, (2) prior to transfer, you must continue to maintain safe control over the byproduct material, and (3) within 60 days of the date of this Order and DFI, decontaminate areas of the building located at 22 Blackburn Drive, Gloucester, Massachusetts, where radioactive material was used and stored.

If you do not believe that you have sufficient funds to pay for the transfer of byproduct materials or the decommissioning of the facility, you must provide specific information necessary to support such claim, as described in Section V of the enclosed Order and DFI.

In addition, you are required to inform NRC, either jointly or separately, by letter, under oath or affirmation, within 10 days of the date of the enclosed Order and DFI, how you intend to comply with NRC requirements; in particular, how you intend to maintain safe control over the byproduct material prior to the transfer of the material to an authorized recipient. You are also required to: (1) provide a decommissioning plan for NRC review and approval within 15 days of the date of the enclosed Order and DFI; (2) notify the NRC by telephone at least two working days prior to the actual transfer; and (3) certify to the NRC, under oath or affirmation, that the byproduct material has been transferred to an authorized recipient within seven days after such transfer.

You are further reminded that no use of the byproduct material is authorized. You are required to abide by the applicable provisions of 10 CFR Part 20 while you maintain NRC-licensed material, and transfer such material to an authorized recipient. Unless this Order and DFI is relaxed in writing, as provided in Section IV of the Order and DFI, you must comply with the Order and DFI.

As stated above, your possession of byproduct material without an NRC license, and without seeking a license to so possess this material, continues to be a violation of the Atomic Energy Act of 1954, as amended, and NRC regulations. You should be aware that unlawful possession of radioactive materials or violation of this Order and DFI may subject you to civil penalties of up to \$100,000 per day as well as criminal sanctions. In addition, your response to this Order and DFI will be reviewed to determine whether enforcement action will be taken against you individually in accordance with 10 CFR 30.10, Deliberate Misconduct. Thus, the issuance of this Order and DFI does not preclude you from being subject to future civil and criminal sanctions.

If you have any questions concerning this Order and DFI, please contact James Lieberman, Director, Office of Enforcement, at (301) 504-2741.

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'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,

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

Enclosure: Order to Cease and Desist Use and Possession of Regulated
Byproduct Material and Decommission Facility and Demand for
Information

cc w/encl:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Massachusetts (2)

William Gustus, Treasurer,
City of Gloucester, City Hall,
9 Dale Avenue
Gloucester, MA 01930

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
MR. RAYMOND TARR	)	Docket No. 030-15075
MR. MILTON R. HAMILTON	)	License No. 20-05520-05 (Expired)
OMNIWAVE ELECTRONICS CORPORATION	)	EA 94-124
RCM CORPORATION	)	
CHEROKEE ELECTRONICS CORPORATION	)	
Gloucester, Massachusetts	)	

ORDER TO CEASE AND DESIST USE AND POSSESSION OF REGULATED BYPRODUCT MATERIAL
AND DECOMMISSION FACILITY AND DEMAND FOR INFORMATION

Mr. Raymond Tarr was President and Mr. Milton R. Hamilton was an authorized user and the Executive Vice-President of Omni-Wave Electronics Corporation (Licensee), the holder of expired Byproduct Materials License No. 20-05520-05 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on November 15, 1985. The License authorized the possession and use of cobalt-60 in any form, up to 10 millicuries, and krypton-85 in any form, up to 500 millicuries, in accordance with the conditions specified therein. The License expired on April 30, 1990.

II

Since the expiration of the License, the byproduct material has remained at 22 Blackburn Drive, Gloucester, Massachusetts, 01930, in a building co-owned by Messrs. Tarr and Hamilton. It was represented to the NRC during a telephone conversation on August 20, 1992, between Mr. Milton Hamilton, Licensee, and Mr. Charles Amato, NRC, that there have been two successors of Omni-Wave Electronics, RCM Corporation and Cherokee Electronics Corporation.

The Licensee did not submit an application for renewal of the License pursuant to 10 CFR 30.37 prior to its expiration, nor did the Licensee notify the Commission, in writing, pursuant to 10 CFR 30.36, of a decision not to renew the License. On January 27, 1992, the NRC, Region I, issued a Notice of Violation (NOV) to the RCM Corporation, ATTN: Mr. Milton Hamilton, as successor to the Licensee, for failure to request renewal, or to file a notice of non-renewal or transfer of the byproduct material, prior to expiration of the License. The letter forwarding the NOV directed RCM Corporation to place the radioactive material in its possession in secure storage until such time as it acquired an NRC license, and stated that no other use of that material or purchase of additional material was authorized. RCM Corporation applied for a possession license on March 19, 1992. However, in a telephone conversation with Mr. Charles G. Amato, Health Physicist, NRC, Region I, on July 29, 1992, Mr. Hamilton stated that RCM Corporation was undergoing reorganization and requested that the application be withdrawn. In a letter dated August 3, 1992, the RCM Corporation withdrew its application for a possession license. As of this date, you, Omni-Wave, RCM Corporation or Cherokee Electronics Corporation have not applied for, nor obtained, an NRC license.

On August 11, 1993, the NRC, Region I, issued a Confirmatory Action Letter No. 1-93-004 (CAL) to Mr. Milton Hamilton of the Omni-Wave Electronics Corporation confirming the Licensee's commitment to develop and submit a decommissioning plan to the NRC Region I office by September 15, 1993, and that the decommissioning work be completed by November 15, 1993. The CAL also stated that Omni-Wave Electronics committed to prepare and transmit to the NRC by November 15, 1993, a report showing the disposition of radioactive material with copies of all

shipping papers. On September 9, 1993, Mr. Hamilton requested an extension to the date stated in the CAL, in order to raise funds for the completion of the decommissioning. He stated that due to a very tight budget and the approximate cost for decommissioning, it was anticipated that the decommissioning would be accomplished within 30-45 days. As of this date, a report has not been transmitted to NRC describing the decommissioning of the facility, nor have copies of shipping papers been submitted to the NRC showing the disposition of radioactive material.

On June 15, 1994, the NRC conducted a special confirmatory safety inspection at 22 Blackburn Drive, Gloucester, Massachusetts. The inspection was performed to identify licensed material still in possession under an expired license and to assure that the material was in safe storage. The inspection included the pump room area of the facility, the manufacturing area, and the storage area used for licensed material. The NRC inspector identified cobalt-60 and krypton-85 byproduct material, cobalt-60 contamination, and cobalt-60 waste, at the facility located at 22 Blackburn Drive, Gloucester, Massachusetts.

III

Messrs. Tarr and Hamilton, as co-owners of the building at 22 Blackburn Drive, Gloucester, Massachusetts, remain in possession of non-exempt radioactive material without a license. This is prohibited by Section 81 of the Atomic Energy Act (AEA) of 1954, as amended, and by 10 CFR 30.3, which state that, (except for persons exempt as provided in 10 CFR Parts 30 and 150), no person shall possess or use byproduct material except as authorized in a specific or

general NRC license. Messrs. Tarr and Hamilton continue to possess the radioactive material contrary to Section 81 of the AEA and 10 CFR 30.3, without an NRC license.

Improper handling of the byproduct material can result in unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Given the circumstances surrounding Messrs. Tarr's and Hamilton's possession of the byproduct material and failure of Mr. Hamilton, whether acting on the behalf of the Licensee or RCM Corporation, as successor to the Licensee, or as an individual, to respond adequately to the NOV and CAL, I lack the requisite reasonable assurance that the health and safety of the public will be protected while Messrs. Tarr and Hamilton remain in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81 and 161b, i, and o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30 the Commission's regulations, Messrs. Tarr and Hamilton must:

- A. Cease and desist from any further use of byproduct material now in their possession.
- B. Continue to maintain safe control over the byproduct material, by keeping the material in locked storage and not allowing any person access to the

material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

- C. Transfer the cobalt-60 and the krypton-85 byproduct material and all associated radioactively contaminated waste located at 22 Blackburn Drive, Gloucester, Massachusetts within 30 days to a person authorized to receive and possess the material.
- D. Decommission the facility within 60 days of the date of this Order and DEI and provide: (1) a notification of when decommissioning has been completed, and (2) a report providing the information required by 10 CFR 30.36 (c)(1)(v)(A) and (c)(1)(v)(B), appending to it the original and one copy of NRC Form-314, "Disposition of Radioactive Material," with copies of all shipping papers. This 60 day period does not excuse the continuing violation of the requirements in 10 CFR 30.36 to remove radioactive contamination, properly dispose of byproduct material, submit a completed form NRC-314, and conduct a radiation survey of the premises.

V

In addition to issuance of this Order, the Commission requires further information from Messrs. Tarr and Hamilton in order to determine whether the Commission can have reasonable assurance that in the future, should Messrs. Tarr or Hamilton perform licensed activities under any other NRC license, Messrs. Tarr

and Hamilton will conduct any activities in accordance with NRC requirements, and to determine whether enforcement action is warranted against Messrs. Tarr or Hamilton, as individuals.

Accordingly, pursuant to sections 161c, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commissions's regulations in 10 CFR 2.204, Messrs. Tarr and Hamilton are hereby required to submit, either jointly or separately, to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, within the timeframe specified below, a statement in writing, under oath or affirmation, on the following information:

1. Within 10 days of the date of this Order and DFI, inform the NRC, by letter, how each intends to comply with NRC requirements; in particular, how you intend to maintain safe control over the byproduct material prior to the transfer of the material to an authorized recipient.
2. Within 15 days of the date of this Order and DFI, Messrs. Tarr and Hamilton shall provide a decommissioning plan for NRC review and approval, which will meet the applicable requirements of 10 CFR 30.36.
3. Within seven days following transfer of the radioactive material, Messrs. Tarr and Hamilton shall provide: (1) confirmation that the cobalt-60 and the krypton-85 have been transferred; and (2) a copy of the certification from the authorized recipient that the byproduct material has been received.

4. At least two working days prior to the date of the transfer of the byproduct material, Mr. Tarr or Mr. Hamilton shall notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone (610-337-5200) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.
5. Within 30 days of the date of this Order and DFI, if Messrs. Tarr and Mr. Hamilton believe they do not have sufficient funds to complete the transfer and decommissioning, they must provide specific evidence supporting such a claim by submitting: (1) an estimate of the cost of the transfer and decommissioning, and the basis for the estimate, including the license number and identity of the person who would perform the transfer and decommissioning; (2) written statements from at least two banks stating that Messrs. Tarr and Hamilton could not qualify for a loan to pay for the transfer of the byproduct materials and decommissioning of the facility; (3) copies of Federal income tax returns for the years ending 1993, 1992, 1991, and 1990, for both Messrs. Tarr and Hamilton; (4) copies of all Bankruptcy Court submittals for the Licensee, RCM Corporation and Cherokee Electronics Corporation; copies of all Bankruptcy Court decisions related to the above corporations; and copies of all correspondence between these corporations and the NRC related to the bankruptcy proceedings; and (5) a signed agreement to allow the NRC to receive Messrs. Tarr and Hamilton's credit information from a credit agency. A SUBMITTAL OF EVIDENCE SUPPORTING THE LACK OF SUFFICIENT FUNDS DOES NOT EXCUSE NONCOMPLIANCE WITH THIS ORDER.

6. Within 30 days of the date of this Order and DFI provide:

- a. A list of all NRC licensees for whom Messrs. Tarr and Hamilton perform licensed activities, or with whom they are associated in any other capacity;
- b. A statement as to why the NRC should have confidence that Messrs. Tarr and Hamilton would comply with NRC requirements in the event that they perform licensed activities under another NRC license.
- c. A statement as to why, in light of the facts set forth above, the NRC should not issue an Order to both Messrs. Tarr and Hamilton, as individuals, prohibiting them from engaging in NRC-licensed activities.

This information is needed in light of the continued violations of Commission requirements. Copies of the response to this Demand for Information also shall be sent to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Assistant General Counsel for Hearings and Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555.

- 9 -

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

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 2nd day of August 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

July 11, 1994

Docket No. 030-06309
License No. 37-13129-01
EA 94-114

Mr. Kurt Linnemann, President
Radiation Management Consultants
3021 Darnell Road
Philadelphia, Pennsylvania 19154

Dear Mr. Linnemann:

Subject: 1. WITHDRAWAL OF THE NOTICE OF VIOLATION AND PROPOSED
 IMPOSITION OF CIVIL PENALTY - \$1,500
 2. ISSUANCE OF A NEW NOTICE OF VIOLATION AND PROPOSED
 IMPOSITION OF CIVIL PENALTY - \$1,500

This letter refers to Radiation Management Consultants' (RMC) letter dated April 22, 1994, in response to the Notice of Violation and Proposed Imposition of Civil Penalty sent to you by our letter dated March 24, 1994. Our letter and Notice described two violations identified during an inspection conducted on December 10, 1993, at the facility of RMC Calibration Services, Inc. located in Wilmington, Delaware. The December 10th inspection was conducted after the NRC learned, during the attempted inspection at your facility on December 9, 1993, that the radioactive material authorized under your license had been moved to a new location in Wilmington, Delaware, the location of RMC Calibration Services, Inc., owned by Dr. Charles McGee, your Radiation Safety Officer (RSO), without informing the NRC and obtaining its consent as required by 10 CFR 30.34. These failures constituted violations of NRC requirements.

To emphasize the importance of compliance with NRC requirements regarding changes of ownership and possession of radioactive material, a Civil Penalty in the amount of \$1,500 was proposed.

In your response you denied the violations on the basis of (1) a contingency in your agreement of sale that did not make the sale complete until a new NRC license was obtained by the purchaser Dr. McGee; and (2) Dr. McGee continuing to be the authorized user and the RSO under the license, and maintaining control of all radioactive materials and their use at all times.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

After consideration of your response, we have concluded that the violations proposed in our letter dated March 24, 1994, should be withdrawn, because, due to the contingencies included in the agreement of sale, RMC owned and remained responsible for the byproduct material until a license was issued to RMC Calibration Services, Inc., and Dr. McGee acted under the RMC license and there was, accordingly, no transfer of ownership or control of the byproduct material. Therefore, the Notice of Violation and Proposed Imposition of Civil Penalty issued March 24, 1994 is withdrawn.

However, we also concluded that several other violations, as discussed in our letter dated December 20, 1993, that transmitted the inspection report 030-06309/93-002, did occur. These violations include, but are not limited to: (1) a change of location for the use of and storage of licensed material without NRC authorization; (2) transport of a Type B quantity of licensed material without an NRC approved Quality Assurance (QA) program; (3) missing package certification; (4) missing shipping paper; (5) a missing quarterly personnel exposure report; (6) failure to post a high radiation area; and (7) missing inventory records. These violations are set forth in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

The failure of Radiation Management Consultants to inform the NRC and obtain its approval of the change of location for the use of and storage of licensed material and the other violations stated above reflect a breakdown in the control of licensed activities, and are classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), 10 CFR Part 2, Appendix C. It is of particular concern that Dr. McGee, who has served as your RSO and is serving in the same capacity in the receiving company, was responsible for knowing NRC regulations and ensuring compliance with them, and was intimately involved in the change of location. In view of these violations, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$1,500 for the violations set forth in the enclosed Notice.

The base civil penalty amount for a Severity Level III violation or problem is \$500. To emphasize the importance of compliance with NRC requirements and the seriousness of management's failure to maintain proper control and oversight of licensed material until that material is validly transferred and in light of the violations that occurred with direct involvement of the RSO, rather than applying the escalation and mitigation factors, we are exercising discretion in accordance with Section VII.A. of the Enforcement Policy and increasing the civil penalty by 200%. Therefore, the penalty has been increased by \$1000 to \$1,500.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. After reviewing your response to this Notice, including your proposed corrective actions, 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 will be placed in the NRC's Public Document Room.

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,

A handwritten signature in black ink, appearing to read "Thomas T. Martin".

Thomas T. Martin
Regional Administrator

Enclosure: As Stated

ENCLOSURE

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Radiation Management Consultants
Philadelphia, Pennsylvania

Docket No. 030-06309
License No. 37-13129-01
EA 94-114

During an attempted NRC inspection at the licensee's facility in Philadelphia, Pennsylvania on December 9, 1993, as well as an inspection conducted on December 10, 1993, at a facility operated by RMC Calibration Services, Inc. in Wilmington, Delaware, 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 Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.34(c) requires, in part, that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license.

Condition 10.B. of License No. 37-13129-01 requires that the licensed material authorized for use under this condition (a J. L. Shepherd Model 28-10 irradiator) be used only at 5301 Tacony Street, Philadelphia, Pennsylvania.

Contrary to the above, the licensee did not confine its possession and use of byproduct material to the location authorized by the license. Specifically, the licensee possessed and used on August 10, 1993, a J. L. Shepherd Model 28-10 irradiator containing about 90 curies of cesium-137 at 2107 North Harrison Avenue, Wilmington, Delaware, a location not authorized by the license. (01013)

- B. 10 CFR 71.12(b) states, in part, that a general license to transport licensed material in a package for which NRC has issued approval, applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of 10 CFR Part 71.

Contrary to the above, on March 31, 1993, the licensee transported an NRC approved package containing a Type B quantity of licensed material under the general license pursuant to 10 CFR 71.12, and the licensee did not have a quality assurance program approved by the Commission. Specifically, on March 31, 1993, the licensee transported a J. L. Shepherd, Model 28-10 irradiator, containing approximately 90 curies of cesium-137, a Type B quantity, from the licensed location at 5301 Tacony Street, Philadelphia, Pennsylvania to 2107 North Harrison Avenue, Wilmington, Delaware. (02013)

- C. 10 CFR 71.12(c)(1) states, in part, that a general license to transport licensed material in a package for which NRC has issued approval, applies only to a licensee who has a copy of the certificate of compliance or other approval of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and actions to be taken prior to shipment.

Contrary to the above, on March 31, 1993, the licensee transported licensed material under the general license pursuant to 10 CFR 71.12, and the licensee did not have a copy of the certificate of compliance or other approval and documents relating to the use and maintenance of the NRC approved package and actions to be taken prior to the shipment. (03013)

- D. 10 CFR 71.12(c)(3) states, in part, that a general license to transport licensed material, in a package for which NRC has issued approval, applies only to a licensee who submits in writing to NRC, prior to the first use of the transport package, the licensee's name, license number, and package identification number.

Contrary to the above, on March 31, 1993, the licensee transported licensed material under the general license pursuant to 10 CFR 71.12, and the licensee had not submitted in writing to NRC prior to the first use of the transport package the licensee's name, license number and the package identification number. (04013)

- E. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the confines of its plant comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 172.200(a) requires, with exceptions not applicable here, that each person who offers a hazardous material for transportation shall describe the hazardous material on a shipping paper in the manner required by subpart C of 49 CFR Part 172. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on March 31, 1993, the licensee transported licensed radioactive material and did not include with the shipment a shipping paper describing the material. (05013)

- F. 10 CFR 20.401(a) requires, in part, that each licensee maintain records showing radiation exposures on Form NRC-5, in accordance with the instructions contained in that form, or on clear and legible records containing all the information required by Form NRC-5.

Contrary to the above, as of December 10, 1993, the licensee did not maintain exposure records containing the required information. Specifically, the exposure record for the first quarter of 1993 was not available for inspection. (06013)

- G. 10 CFR 20.203(c) requires, in part, that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: "Caution, High Radiation Area" or "Danger, High Radiation Area". 10 CFR 20.202(b)(3) defines a high radiation area as any area accessible to personnel in which there exists radiation originating in whole or in part within licensed material at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirems.

Contrary to the above, on August 10, 1993, a high radiation area in the front room at the Wilmington, Delaware location, was not posted as required. Specifically, during a calibration of a client's survey meter with an unattenuated exposure from the J. L. Shepherd irradiator, Model 28-10, containing approximately 90 curies of cesium-137, in an area accessible to personnel, there existed radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirems. (07013)

- H. Condition 14 of License No. 37-13129-01 requires, in part, that the licensee shall conduct a physical inventory every 6 months to account for all sources possessed under the license.

Contrary to the above, as of December 10, 1993, the licensee did not conduct a physical inventory every six months to account for all sources possessed under the license. Specifically, the only formal inventory record maintained was dated June 30, 1992. (08013)

These violations represent a Severity Level III problem. (Supplements IV, V, and VI).

Civil Penalty - \$1,500

Pursuant to the provisions of 10 CFR 2.201, Radiation Management Consultants (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) 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 the license should not be modified, suspended, or revoked or why such other action as may be proper should not

Notice of Violation

4

be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, PA 19406.

Dated at King of Prussia, Pennsylvania
this // ~~th~~ day of July 1994

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

November 3, 1994

EA 94-114

Mr. Kurt Linnemann, President
Radiation Management Consultants
3021 Darnell Road
Philadelphia, Pennsylvania 19154

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$1,500

Dear Mr. Linnemann:

This refers to your letters dated August 10, 1994, and August 19, 1994, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated July 11, 1994. Our letter and Notice described several violations that were classified in the aggregate at Severity Level III. To emphasize the need for proper control of licensed activities, a civil penalty in the amount of \$1,500 was proposed for the violations.

In your response, you deny two of the violations (F and G), and either admit or partially admit the other six violations. In addition, you request remission of the civil penalty, for the reasons summarized in the enclosed Appendix.

After consideration of your response, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty, that an adequate basis was provided for withdrawal of Violation F. Also as stated in the Appendix, an adequate basis for withdrawal of all of the other violations, or for mitigation of the civil penalty, was not shown. Notwithstanding the withdrawal of Violation F, the remaining violations constitute a sufficient basis for the NRC to conclude that a breakdown in control of licensed activities occurred and that no change in the civil penalty is appropriate. Accordingly, we hereby serve the enclosed Order on Radiation Management Consultants imposing a civil monetary penalty in the amount of \$1,500. As provided in Section IV of the Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

In addition, you have not provided corrective actions for Violation G. Within 30 days of the date of this letter, you are required to provide written corrective actions in accordance with the enclosure to our letter dated July 11, 1994.

Radiation Management
Consultants

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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's Public Document Room.

Sincerely,

James Lieberman, Director
Office of Enforcement

Docket No. 030-06309
License No. 37-13129-01

Enclosures: As Stated

cc w/encs:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

RADIATION MANAGEMENT CONSULTANTS
Philadelphia, Pennsylvania

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Docket No. 030-06309
License No. 37-13129-01
EA 94-114

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Radiation Management Consultants (Licensee) is the holder of Byproduct Materials License No. 37-13129-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on April 13, 1992. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein. The license is due to expire on April 30, 1997. In addition, on December 13, 1993, the Licensee requested termination of the license.

II

An inspection of the Licensee's activities was conducted on December 9-10, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 11, 1994. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in letters dated August 10, and August 19, 1994. In its response, the Licensee denies two of the violations

(F and G), and either admits or partially admits the other six violations. In addition, the licensee requests remission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation F should be withdrawn and that Violations A - E, G, and H, occurred as stated in the Notice and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

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

The Licensee pay a civil penalty in the amount of \$1,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

- (b) whether, on the basis of such violations, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 3rd day of November 1994

APPENDIX

EVALUATION(S) AND CONCLUSION

On July 11, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Radiation Management Consultants (Licensee) responded to the Notice on August 10, 1994 and August 19, 1994. The licensee denies two of the violations (F and G), and either admits or partially admits the other six violations. In addition, the licensee requests remission of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violation A

10 CFR 30.34(c) requires, in part, that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license.

Condition 10.B. of License No. 37-13129-01 requires that the licensed material authorized for use under this condition (a J. L. Shepherd Model 28-10 irradiator) be used only at 5301 Tacony Street, Philadelphia, Pennsylvania.

Contrary to the above, the licensee did not confine its possession and use of byproduct material to the location authorized by the license. Specifically, the licensee possessed and used on August 10, 1993, a J. L. Shepherd Model 28-10 irradiator containing about 90 curies of cesium-137 at 2107 North Harrison Avenue, Wilmington, Delaware, a location not authorized by the license.

Summary of Licensee Response to Violation A

The licensee, in its response, admits the violation with qualification, noting that the previous amendments of its license had permitted the licensee to use and move the source at/to other locations, and with the emergency nature of the move, the licensee states that it forgot that this no longer was permissible.

NRC Evaluation of Licensee's Response to Violation A

The licensee's existing license provides that the irradiator "may be used only at the licensee's facilities at 5301 Tacony Street., Building 107, Philadelphia, Pennsylvania. Since the licensee did not confine its possession and use to the location listed on the existing license, the NRC maintains that the violation occurred as stated in the Notice.

2. Restatement of Violation B

10 CFR 71.12(b) states, in part, that a general license to transport licensed material in a package for which NRC has issued approval, applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of 10 CFR Part 71.

Contrary to the above, on March 31, 1993, the licensee transported an NRC approved package containing a Type B quantity of licensed material under the general license pursuant to 10 CFR 71.12, and the licensee did not have a quality assurance program approved by the Commission. Specifically, on March 31, 1993, the licensee transported a J. L. Shepherd, Model 28-10 irradiator, containing approximately 90 curies of cesium-137, a Type B quantity, from the licensed location at 5301 Tacony Street, Philadelphia, Pennsylvania to 2107 North Harrison Avenue, Wilmington, Delaware.

Summary of Licensee Response to Violation B

The licensee, in its response, partially admits the violation, noting that the previous amendments of their license had permitted them to move the source, and with the emergency nature of their move, the licensee states that it forgot that this was no longer permissible, and therefore did not notify the NRC and request permission for transport of the source. The licensee states that a copy of its quality assurance plan has been a part of its licensing packet for years.

NRC Evaluation of Licensee's Response to Violation B

With respect to the licensee's statement regarding the movement of the source, the current license provides that the irradiator "may be used only at the licensee's facilities at 5301 Tacony Street., Building 107, Philadelphia, Pennsylvania." With respect to the licensee's statement that a copy of its quality assurance plan has been a part of its licensing packet for years, the QA plan in the license is a Corporate Quality Assurance Plan for its overall operations. That plan does not address transport of radioactive materials as required by Subpart H - Quality Assurance in 10 CFR 71.101 (c) and does not comply with the requirement to have such a plan approved by the NRC prior to transportation of Type B quantities of licensed material. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

3. Restatement of Violation C

10 CFR 71.12(c)(1) states, in part, that a general license to transport licensed material in a package for which NRC has issued approval, applies only to a licensee who has a copy of the certificate of compliance or other approval of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and actions to be taken prior to shipment.

Contrary to the above, on March 31, 1993, the licensee transported licensed material under the general license pursuant to 10 CFR 71.12, and the licensee did not have a copy of the certificate of compliance or other approval and documents relating to the use and maintenance of the NRC approved package and actions to be taken prior to the shipment.

Summary of Licensee Response to Violation C

The licensee states, in its response, that it partially admits the violation, noting that a copy of their drawings and a copy of their certification of compliance (COC) have been a part of their licensing packet for years.

NRC Evaluation of Licensee's Response to Violation C

Although the licensee states that a copy of the drawings and the COC had been a part of its license for years, when this information was requested by the inspector at the time of the inspection, the Licensee was unable to show the drawings or COC to the inspector. A copy of the COC is not located within the NRC license file for this licensee. A shipping document used by the vendor to deliver the irradiators to the licensee in 1978, referred to in the licensee's response, states the packaging to be a certified DOT Specification 55 container; however, 49 CFR 173.416(a) states that use of this package is not authorized after June 30, 1985, unless approved by the NRC (49 CFR 173.416(b)). In addition, only one drawing, a circuit diagram, could be found in the licensee's docket file. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

4. Restatement of Violation D

10 CFR 71.12(c)(3) states, in part, that a general license to transport licensed material, in a package for which NRC has issued approval, applies only to a licensee who submits in writing to NRC, prior to the first use of the transport package, the licensee's name, license number, and package identification number.

Contrary to the above, on March 31, 1993, the licensee transported licensed material under the general license pursuant to 10 CFR 71.12, and the licensee had not submitted in writing to NRC prior to the first use of the transport package the licensee's name, license number and the package identification number.

Summary of Licensee Response to Violation D

The licensee, in its response, partially admits the violation, noting that documents relating to the source have been a part of their licensing packet for years.

NRC Evaluation of Licensee's Response to Violation D

While the licensee states that the referenced documents have been a part of its licensing packet for years, 10 CFR 71.12(c)(3) requires that the licensee submit in writing to the Director, Office of Nuclear Material and Safeguards, Washington, DC, 20555 prior to the first use of the package, the licensee's name, license number and the package identification number. NRC records indicate that this was not done.

(In addition, the required material was not in the licensing package (see response to Violation B, above)). Therefore, the NRC maintains that the violation occurred as stated in the Notice.

5. Restatement of Violation E

10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the confines of its plant comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 172.200(a) requires, with exceptions not applicable here, that each person who offers a hazardous material for transportation shall describe the hazardous material on a shipping paper in the manner required by subpart C of 49 CFR Part 172. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on March 31, 1993, the licensee transported licensed radioactive material and did not include with the shipment a shipping paper describing the material.

Summary of Licensee Response to Violation E

The licensee, in its response, partially admits the violation. The licensee referred to a shipping paper in its response.

NRC Evaluation of Licensee's Response to Violation E

The documents submitted by the licensee as shipping papers for the March 31, 1993, movement were the shipping papers used by the vendor to originally deliver the irradiator to the licensee in 1978. Shipping papers must contain current information relevant to the shipment for which they are prepared. Since the licensee has not provided a shipping paper for the transfer on March 31, 1993, the NRC concludes that the violation occurred as stated in the Notice.

6. Restatement of Violation F

10 CFR 20.401(a) requires, in part, that each licensee maintain records showing radiation exposures on Form NRC-5, in accordance with the instructions contained in that form, or on clear and legible records containing all the information required by Form NRC-5.

Contrary to the above, as of December 10, 1993, the licensee did not maintain exposure records containing the required information. Specifically, the exposure record for the first quarter of 1993 was not available for inspection.

Summary of Licensee Response to Violation F

The licensee, in its response, denies the violation, noting that while the cited record was not immediately found during the inspection, it was subsequently located and provided as Attachments in its reply to the inspection report. The licensee states that the documents were located and supplied to the NRC, and this was only a temporary misplacement (not filing of one document).

NRC Evaluation of Licensee's Response to Violation F

On the day of the inspection, the licensee was unable to find this record. The licensee later submitted a copy of this record to the NRC that reflected review by the RSO in May 1993. The NRC accepts this documentation of compliance and withdraws this violation.

7. Restatement of Violation G

10 CFR 20.203(c) requires, in part, that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: "Caution, High Radiation Area" or "Danger, High Radiation Area". 10 CFR 20.202(b)(3) defines a high radiation area as any area accessible to personnel in which there exists radiation originating in whole or in part within licensed material at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirems.

Contrary to the above, on August 10, 1993, a high radiation area in the front room at the Wilmington, Delaware location, was not posted as required. Specifically, during a calibration of a client's survey meter with an unattenuated exposure from the J. L. Shepherd irradiator, Model 28-10, containing approximately 90 curies of cesium-137, in an area accessible to personnel, there existed radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirems.

Summary of Licensee Response to Violation G

The licensee, in its response, disagrees with the violation noting that it has never been questioned/cited for this by previous NRC inspectors because its use as a high radiation area is always of a few minutes duration and under direct surveillance in accordance with 10 CFR 20.203(c)(4) and an electrical light beam automatically shuts the source down if someone attempts to enter the area of the radiation beam, citing 10 CFR 20.203(c)(2)(i).

NRC Evaluation of Licensee's Response to Violation G

First, inspections are audits and may not identify all violations that exist. Second, while the licensee notes that the exposures were only for a few minutes, that period of time of exposure to a 90 curie

cesium-137 source has the potential for a whole body exposure of 100 millirem in one hour. 10 CFR 20.203(c)(4), now replaced by 10 CFR 20.1902, allowed a high radiation area established for less than 30 days, to be under direct surveillance rather than have the access controls mentioned in 10 CFR 20.203(c)(2). However, the requirement for posting the area as a High Radiation Area in 10 CFR 20.203(c)(1) is not excepted by 10 CFR 20.203(c)(4). 10 CFR 20.203(c)(2) addresses the requirements for control devices and alarms at access points and does not address posting requirements. In addition, the High Radiation Area was established on March 31, 1993, and existed intermittently until the inspection on December 10, 1993, a period of more than 30 days. Furthermore, the presence of the light beam does not negate the requirement for posting of the High Radiation Area in accordance with 10 CFR 20.203(c)(1). Therefore, the NRC maintains that the violation occurred as stated in the Notice.

8. Restatement of Violation H

Condition 14 of License No. 37-13129-01 requires, in part, that the licensee shall conduct a physical inventory every 6 months to account for all sources possessed under the license.

Contrary to the above, as of December 10, 1993, the licensee did not conduct a physical inventory every six months to account for all sources possessed under the license. Specifically, the only formal inventory record maintained was dated June 30, 1992.

Summary of Licensee Response to Violation H

The licensee, in its response, partially admits the violation, noting that visual inventories are conducted when the leak tests are performed. In addition, the licensee notes that since the inventory has not changed significantly in 10 plus years (no sources have been disposed), and all additions are exempt quantities, a separate, new document was not generated each time. The licensee also states that it has inventories from the 1980s showing the same sources.

NRC Evaluation of Licensee's Response to Violation H

License Condition 14 states in its entirety: "The licensee shall conduct a physical inventory every 6 months to account for all sources and/or devices received and possessed under the license. Records of inventories shall be maintained for 5 years from the date of each inventory." The licensee states that an inventory was done at the time of the leak tests and it simply did not keep records of the inventory. However, not all licensed material possessed by the licensee required a leak test and, therefore, some licensed material was not inventoried. The NRC notes that the license application dated March 28, 1991, does not indicate that the licensee is using its leak test as its inventory. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

9. Summary of Licensee's Request for Mitigation

In its response, the licensee requests mitigation of the penalty based on its denial of some of the violations, its corrective actions taken as soon as possible after identification of the potential violations, its statement that it has received no prior penalties or violations, and its request for termination which the licensee states, if the penalty were withdrawn, would allow the licensee to close the file with a clean/clear record.

NRC Evaluation of Licensee's Request for Mitigation

Notwithstanding the licensee's statement, the NRC concludes that the licensee has not provided an adequate basis for mitigation of the penalty. With respect to the licensee's denial of the violations, the NRC maintains that all but one occurred as stated, as described herein. With respect to the licensee's corrective actions, a basis did not exist for mitigation of the penalty because the principal corrective action of securing a new license was necessary to continue business operations, rather than for the purpose of enhancing or restoring safety. Except for Violation G, regarding the other violations, the licensee committed to following the regulations in the future. Regarding Violation G, the licensee did not state what its corrective actions are and still needs to respond to that issue. With respect to the licensee's past history and desire to maintain a clean record, a basis did not exist for mitigation of the penalty because of the seriousness and duration of the violation.

10. NRC Conclusion

The NRC has concluded that Violation F should be withdrawn and that Violations A - E, G, and H occurred as stated in the Notice, and an adequate basis was not provided for withdrawal of the remaining violations, or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$1,500 should be imposed.

**C. MATERIALS LICENSEES, SEVERITY LEVEL VIOLATIONS,
NO CIVIL PENALTY**

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

December 28, 1994

EA 94-243

Adams Construction Company
ATTN: Gary W. Wright, Executive
Vice President
523 Rutherford Ave., N.E.
Roanoke, Virginia 25027

Dear Mr. Wright:

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 45-17887-01/94-01)

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Mr. L. Franklin of this office on November 17, 1994. The inspection involved a review of the circumstances and corrective action taken after a density gauge containing byproduct material was damaged on October 28, 1994 at your temporary job site on State Road 40 near Victoria, Virginia. The report documenting this inspection was sent to you by letter dated December 8, 1994. During the inspection, violations of NRC requirements were identified.

Violation A, described in the enclosed Notice of Violation (Notice), involved a failure to comply with the requirements of 10 CFR 20.1802 during use of a Troxler Model 4640 layer density gauge, containing eight millicuries of cesium-137. 10 CFR 20.1802 requires that a licensee control and maintain constant surveillance of a device containing byproduct material when the device is located in a controlled or unrestricted area and the device is not in storage. On October 28, 1994, your staff failed to control and maintain surveillance of the Troxler layer density gauge. The gauge was left on a roadway and was damaged when a vehicle ran over it. The root cause of Violation A was the failure of the gauge operator to either adequately control or secure the gauge.

As stated in our letter of December 8, 1994, the NRC normally provides licensees an opportunity for an enforcement conference prior to making a decision in an escalated enforcement action. During a December 19, 1994 telephone call with Mr. C. Hosey of my staff, Mr. R. Robson, your Safety Director, advised of your decision not to participate in an enforcement conference and stated that all relevant information concerning the violation had been provided to the NRC.

We have reviewed the information obtained during our inspection of this issue and conclude that sufficient information is available to determine the appropriate enforcement action in this matter.

The NRC considers the loss of control of byproduct material to be a serious safety issue. We expect all general licensees who use devices containing byproduct material to implement effective controls for these devices. Adherence to the requirements governing the use of those devices is essential

to ensure that the health and safety of your employees and the public is protected. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, Violation A has been categorized at Severity Level III.

The NRC understands that your corrective actions included: (1) immediate actions to secure the job site and retrieve the byproduct material; (2) training of all gauge users to ensure their compliance with license conditions and NRC regulations at all times; and, (3) requiring each gauge user to again read NRC Information Notice 93-18, "Portable Moisture-Density Gauge User Responsibilities During Field Operations" to ensure understanding and compliance.

In accordance with the Enforcement Policy, a civil penalty is considered for a Severity Level III violation. However, I have been authorized not to propose a civil penalty in this case based on the application of the civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy. Mitigation of 25 percent was applied for the factor of identification because although the violation was self-disclosing, you promptly identified the root cause of the violation and took corrective action. Mitigation of 50 percent was also warranted for corrective actions because you took prompt and extensive corrective actions. Further mitigation of 100 percent was warranted for the factor of licensee performance because you had no previous violations in this area. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the civil penalty for Violation A in the Notice has been fully mitigated.

Violation B, described in the enclosed Notice, involves the failure to provide required training to the gauge operator involved in the event. License Condition 12 of your license for the Troxler Model 4640 layer density gauge required that the licensed material be used by individuals who have satisfactorily completed the device manufacturer's training program. The operator using the layer density gauge was working independently and had not received all the required training. The root cause of this violation was an isolated weakness in your training program that allowed the operator to work independently prior to completing the required training. This violation has been categorized as a Severity Level IV violation.

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. 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, its enclosure, and any reply will be placed in the NRC Public Document Room.

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.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Stewart D. Ebner For
Stewart D. Ebner
Regional Administrator

Docket No. 030-13589
License No. 45-17887-01
EA 94-243

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Virginia

NOTICE OF VIOLATION

Adams Construction Company
Roanoke, Virginia

Docket No.: 030-13589
License No.: 45-17887-01
EA 94-243

During an NRC inspection conducted on November 17, 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 Part 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, on October 28, 1994, the licensee failed to maintain control and constant surveillance of licensed material in an unrestricted area that was not in storage. Specifically, a Troxler Model 4640 layer density gauge, containing approximately 8 millicuries of Cesium-137, which was located in a roadway in Victoria, Virginia, an unrestricted area, was not in storage and was not controlled. (01013)

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

- B. License Condition 12 of NRC License 45-17887-01, requires, in part, that licensed material shall be used by individuals who have satisfactorily completed the device manufacturer's training program.

Contrary to the above, on October 28, 1994, a Troxler Model 4640 layer density gauge, containing approximately 8 millicuries of Cesium-137, was used at a temporary job site in Victoria, Virginia, by an individual who had not completed the Troxler training program. (01024)

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Adams Construction Company is hereby required to submit a written statement or explanation to the Regional Administrator, Region II, with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, 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 demand for information may be

issued as to why the 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.

Dated at Atlanta, Georgia

This 28th day of December 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 23, 1994

EA 94-229

A TEC Associates, Inc
ATTN: Larry A. Jeffers, P.E
Vice President
Ohio District Manager
11121 Canal Road
Cincinnati, Ohio 45241-1861

Dear Mr. Jeffers:

SUBJECT: NOTICE OF VIOLATION AND ENFORCEMENT CONFERENCE
(NRC INSPECTION REPORT NO. 030-29977/93001)

This refers to the special safety inspection conducted from October 24 to November 2, 1994, to review the circumstances surrounding damage to a soil moisture/density gauge containing NRC licensed materials. A significant violation of NRC requirements was identified during the inspection, and a copy of the inspection report was mailed to you on November 14, 1994. On November 17, 1994, an enforcement conference was held by telephone. Enclosure 1 is a list of the participants in the telephone call.

The gauge, containing sealed sources of cesium-137 and americium-241, was damaged on August 13, 1994, at a construction site in Lebanon, Ohio. The gauge technician left the device unattended and did not maintain direct surveillance of the device while he was elsewhere on the construction site. The gauge case and handle were damaged when construction equipment ran over it while the technician was away. However, the NRC licensed material was not damaged.

The root cause of the violation and the subsequent corrective actions were discussed during the enforcement conference. The major factor contributing to the violation was the technician's failure to return the gauge to the truck following a test because he was trying to save time and complete his other assignments at the construction site. The NRC recognizes that corrective actions consisted of, but were not limited to, (a) retraining the technician involved; (b) notifying all technicians in the Cincinnati, Ohio, office of the incident; (c) instituting a disciplinary policy for violations of radiation safety requirements; and (d) disseminating information about the incident to other ATEC facilities using licensed materials.

The inspection report was also discussed during the enforcement conference. The ATEC representatives agreed with the facts reported and pointed out a textual error in Paragraph 4 of the report. The report now reads, "... Failure to maintain control and constant surveillance of the gauge resulted in damage to licensed material. ..." However, that sentence should read, damage to a device containing licensed material (emphasis added).

The violations identified during the inspection are described in the enclosed Notice of Violation (Notice) (Enclosure 2). Violation A concerns the significant failure to control licensed material and is categorized at Severity Level III in accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

The NRC entrusts responsibility for radiation safety to the management of your organization; therefore, the NRC expects effective management oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety, including the health and safety of its employees, by assuring that all NRC requirements are met. In this case the technician left the gauge unattended while he pursued other activities on the construction site.

A civil monetary penalty is considered for a Severity Level III violation. However, after considering the civil penalty adjustment factors, I have decided not to issue a civil penalty in this case because of the self-disclosing nature of the violation and your efforts in determining the root cause; the prompt and extensive corrective actions; and the good past performance of the Cincinnati office.

Violation B pertains to the training of gauge technicians. In this instance a technician had received training from a previous employer, but his training was not by one of the two methods described in Condition No. 11 of the Byproduct Material License issued to ATEC. This violation is categorized at Severity Level IV in accordance with the NRC Enforcement Policy. Violation B is of regulatory concern because ATEC Associates, Cincinnati, Ohio, was previously cited for the same violation. Should a similar event occur, the NRC will consider other escalated enforcement action.

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. You should also describe your actions to ensure that technicians are properly trained and fully qualified before they are permitted to use NRC licensed materials. 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, its enclosure, and your responses will be placed in the NRC Public Document Room. To the extent possible, your response should not contain any personal privacy, proprietary, or safeguards information so that it can be placed in the NRC Public Document Room (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 Notice are not subject

ATEC Associates, Inc.

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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,

John B. Martin
Regional Administrator

Docket No. 030-17324
License No. 34-18893-01

Enclosures: 1. Enforcement Conference Participants
2. Notice of Violation

cc w/enclosures: Kevin Gara, ATEC Director
of Health and Safety
State of Ohio

November 17, 1994
Enforcement Conference
ATEC Associates, Inc.
Cincinnati, Ohio

EA 94-229

List of Participants

Representing ATEC Associates, Inc.:

Larry A. Jeffers, Vice President and Ohio District Manager
Kevin Gara, ATEC Director of Health and Safety
Jerry Chenoweth, ATEC Assistant Director of Health and Safety

Representing the NRC:

Roy J. Caniano, Chief Nuclear Materials Safety Branch
B. J. Holt, Chief Nuclear Materials Safety Section 1
Toye L. Simmons, Radiation Specialist
Bruce A. Berson, Regional Counsel
Charles H. Weil, Enforcement Specialist

NOTICE OF VIOLATION

ATEC Associates, Inc.
Cincinnati, Ohio

Docket No. 030-17324
License No. 34-18893-01
EA 94-229

During an NRC inspection conducted on October 24 to November 2, 1994, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are set forth below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on August 13, 1994, the licensee did not secure from unauthorized removal or limit access to a Troxler moisture density gauge, containing a nominal 8 millicuries of cesium-137 and 40 millicuries of americium-241, used at a construction site in Lebanon, Ohio, an unrestricted area, nor did the licensee control or maintain constant surveillance of this licensed material. (01013)

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

- B. Condition 11 of License No. 34-18893-01 requires that licensed material be used by, or under the supervision and in the physical presence of, individuals who have completed the gauge manufacturer's training program or the licensee's training program contained in the application dated May 15, 1990.

Contrary to the above, between May and August 1994, licensed material was routinely used by an individual who had not completed the gauge manufacturer's training program or the licensee's training program. (02014)

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, ATEC Associates, Inc. (Licensee) 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, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351 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 the license should

Notice of Violation

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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.

Dated at Lisle, Illinois
the 23 day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 24, 1994

EA 94-200

East Jordan Iron Works, Inc.
ATTN: Trace K. Malpass
Executive Vice President
P.O. Box 439
East Jordan, MI 49727

SUBJECT: NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 030-13173/94001(DRSS)

Dear Mr. Malpass:

This refers to the special safety inspection conducted August 8, 1994 through September 21, 1994, to review the event you reported to the NRC on July 15, 1994, involving potential radiation overexposure to workers who entered a cupola with nuclear gauges that were not shielded (locked-out). The report documenting this inspection was mailed to you by letter dated October 3, 1994. Significant violations of NRC requirements were identified during the inspection. On October 12, 1994, a telephone enforcement conference was held with you and Mr. Roy Caniano, Chief, Nuclear Materials Safety Branch of Region III, and other members of our respective staffs. A copy of the enforcement conference report is attached.

The inspection report described the circumstances surrounding the violations in the enclosed Notice of Violation (Notice). We note that three out of the five violations were identified by you and corrected prior to the inspection. We also acknowledge that when you discovered maintenance workers had been exposed to unnecessary radiation from the cesium-137 gauges while working in a cupola, you contracted with a health physics consultant to determine the dose to the workers and to formulate a corrective action program. The consultant concluded, and we agree, that no worker received a radiation dose in excess of the limits specified in 10 CFR Part 20.1201 (5000 mrem in one year).

The root cause of the violations and the subsequent corrective actions were discussed during the October 12, 1994, telephone enforcement conference. The major factor contributing to the violations and the resulting unnecessary radiation exposures appeared to be a failure to recognize the potential safety risks associated with the use of the nuclear gauges. This failure, in turn, led to a lack of awareness of the requirements of your license including lock-out procedures and other safety precautions.

The NRC entrusts responsibility for radiation safety to the management of the company; therefore, the NRC expects effective management oversight of

its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety by assuring that all NRC requirements are met and any potential violation or deviation of NRC requirements is identified and expeditiously corrected.

The violations collectively represent a breakdown in the control of licensed activities involving a number of violations that are related that collectively represent a potentially significant lack of attention. Therefore, in accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violations are categorized as a Severity Level III problem.

In accordance with the Enforcement Policy, a civil penalty is usually considered for a Severity Level III problem. However, I have decided not to propose a civil penalty in this case because: (1) you identified the potential violation involving radiation exposure to the workers and also identified the violations pertaining to the unauthorized relocation of gauges and failure to have lock-out procedures; and (2) you took prompt and extensive corrective actions, including upgrading lock-out procedures, training the staff, restructuring the radiation safety officer (RSO) position, and revising your license. The remaining factors in the enforcement policy were also considered and no further adjustment to the base civil penalty was considered appropriate. Therefore, the civil penalty was fully mitigated.

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. We recognize that you have already documented certain corrective actions. It will be acceptable to reference previous correspondence in preparing your response to this Notice. 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, its enclosure, and your response will be placed in the NRC Public Document Room. Accordingly, your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be released to the public and placed in the NRC Public Document Room.

East Jordan Iron Works, Inc.

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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, Public Law No. 96-511.

Sincerely,

John B. Martin
Regional Administrator

License No. 21-13462-02
Docket No. 030-13173

Enclosures: 1. Notice of Violation
2. NRC Report No.
030-13173/94002(DRSS)

NOTICE OF VIOLATION

East Jordan Iron Works, Inc.
East Jordan, MI 49727

Docket No. 030-13173
License No. 21-13462-02
EA 94-200

During an NRC inspection conducted August 8 through September 21, 1994, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

- A. Condition 19 of License No. 21-13462-02 requires the licensee to assure that the shutter mechanism is locked in the closed position during periods when a portion of an individual's body may be subject to the direct radiation beam.

Contrary to the above, from June 7, 1993, the inception of the current requirement, through July 2, 1994, the licensee failed to assure that the shutter mechanisms were locked in the closed position during periods when a portion of an individual's body could have been subjected to the direct radiation beam. Specifically, approximately twice a month through July 2, 1994, individuals entered the cupola and the shutter mechanisms on the gauges containing cesium-137 were not closed or locked in the closed position. (01013)

- B. Condition 13.E. (formerly Condition 12.D) of License No. 21-13462-02 authorizes the licensee to collect leak test samples for analysis by Kay-Ray, Inc. Alternatively, tests for leakage and/or contamination may be performed by persons specifically licensed by the Commission or an Agreement State to perform such services.

Contrary to the above, as of August 8, 1994, leak test samples were not analyzed by Kay-Ray, Inc. or other persons specifically licensed by the Commission or an Agreement State to perform such services. (01023)

- C. 10 CFR 20.1904(a) requires that the licensee ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "Caution, Radioactive Material" or "Danger, Radioactive Material." The label must also provide sufficient information (such as the radionuclide present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment) to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

Contrary to the above, on August 8, 1994, the licensee failed to ensure that the gauges containing cesium-137 bore a durable, clearly visible label bearing the radiation symbol and the required words. (01033)

- D. Condition 16 (formerly Condition 14) of License No. 21-13462-02 requires that installation, relocation, removal from service, maintenance, and repair of devices containing sealed sources be performed by Kay-Ray, Inc., or by other persons specifically licensed by the Commission or an Agreement State to perform such services.

Contrary to the above, in 1988 and on several occasions within the last five years, gauges were removed from service, relocated and installed by persons other than Kay-Ray, Inc. or other persons specifically licensed. Specifically, unauthorized licensee personnel removed, installed and repositioned devices containing sealed sources. (01043)

- E. 10 CFR 20.1301(a)(2) states that each licensee shall conduct operations so that the dose in any unrestricted area from external sources does not exceed 0.002 rem (0.02 mSv) in any one hour. 10 CFR 20.1003 defines an unrestricted area as an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, as of July 11, 1994, the licensee conducted operations so that the dose in an unrestricted area (cupola) from cesium-137 sources exceeded 0.002 rem (0.02 mSv) in any one hour. Maximum radiation levels present inside the cupola measured 0.498 rem per hour. (01053)

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

Pursuant to the provisions of 10 CFR 2.201, East Jordan Iron Works, Inc. (Licensee) 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, Region III, 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 to show cause why the 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.

Dated at Lisle, Illinois
this 24 day of October 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 17, 1994

EA 94-218

Northern Indiana Public Service Company (NIPSCO)
ATTN: Kevin Strnatka, Manager
Production Operations Planning
Southlake Complex
5265 Hohman Ave.
Hammond, IN 46320-17775

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-08362/94001)

Dear Mr. Strnatka:

This refers to the special safety inspection conducted on September 7 through October 12, 1994, at NIPSCO's R. M. Schahfer Generating Station in Wheatfield, Indiana. The report documenting this inspection was mailed to you by letter dated October 27, 1994. This inspection was in response to your August 23, 1994 telephone notification of a lost nuclear gauge containing approximately 13 millicuries (480 MBq) of cesium-137. The gauge was located on a coal sampler and used to determine if the chute on the sampler was plugged with coal. Significant violations of NRC requirements were identified during the inspection, and on November 3, 1994, an enforcement conference was held in the Region III office. Attending the enforcement conference were you, Mr. Roy J. Caniano, Chief, Nuclear Materials Safety Branch, and other members of our respective staffs.

The inspection report described the circumstances surrounding the loss of the nuclear gauge. Although we do not intend to describe them again in detail, we note that the gauge was discovered missing during a semiannual inventory in July 1994. The gauge was one of 238 nuclear gauges at your R. M. Schahfer facility and was accounted for during the previous inventory conducted in January 1994. The gauge was subsequently confirmed lost and on August 22, 1994, the loss was reported to the NRC. The gauge was apparently removed from its installed location in June 1994 during demolition activities. It was shipped to a local steel plant, where it is assumed that it was melted down with other scrap metals. We acknowledge that NIPSCO expended significant effort and financial resources in an attempt to locate the lost gauge, including dismantling scrap piles and conducting radiological surveys of several thousand tons of scrap metal. Your exposure evaluation indicates that any potential radiation exposures to contractor personnel involved with the demolition and possible handling of the device would be less than the annual exposure limits to the public specified in 10 CFR 20.1301 and we agree with this conclusion. Furthermore, assuming that the device was melted down with other metal scrap, the cesium-137 contained in the sealed source would likely disperse within the slag material and not in the finished steel, resulting in minimal if any radiological significance to the general public. Nevertheless, loss of control of licensed material is a violation of NRC regulations as set forth in Item I of the enclosed Notice of Violation (Notice) and is categorized as a Severity Level III violation. Section II of the Notice

addresses your failure to immediately report a loss of licensed material to the NRC and is categorized as a Severity Level IV violation.

The NRC entrusts responsibility for radiation safety to the management of the facility; therefore, the NRC expects effective management oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility to protect the public health and safety by assuring that all NRC requirements are met and any potential violation of NRC requirements is identified and expeditiously corrected.

The root cause of the violations and the subsequent corrective actions were discussed during the November 3, 1994, enforcement conference. The major factor contributing to the violations appeared to be the failure to notify the radiation safety officer (RSO) of the planned demolition activities in areas where nuclear gauges were located and the failure of key plant personnel to recognize the presence of a nuclear gauge during the pre-demolition walk down. The NRC recognizes that long term corrective actions are now being initiated; however, those actions were neither prompt nor extensive and some were initiated only after prompting by the NRC (i.e., using your radiation protection General Order to aid in the identification of nuclear gauges when conducting area walk-downs and providing all pertinent departments with a list of gauge locations). Other aspects of your long term corrective actions appear to be only reiterations of activities you are already required to perform pursuant to the specific condition of your NRC license. An example of these is the requirement to conduct periodic physical inventories to review and update the description and location of all nuclear devices in your possession.

In accordance with the Enforcement Policy, a civil penalty is usually assessed for a Severity Level III violation in order to emphasize the need to strictly control licensed material to ensure public health and safety. However, after considering the civil penalty adjustment factors set forth in the NRC's Enforcement Policy, I have decided that a civil penalty will not be assessed for the Severity Level III violation. The base value of a civil penalty for a Severity Level III violation is \$500. The amount of the civil penalty was mitigated 50 percent because you identified the violation. The civil penalty was escalated 50 percent because your initial corrective actions were short term and were neither prompt nor extensive. The last NRC inspection conducted in 1991 did not identify any violations, therefore, we mitigated the civil penalty 100 percent for your overall good past performance. The remaining factors in the enforcement policy were also considered and no further adjustment to the base civil penalty is considered appropriate. Therefore, on balance the civil penalty was mitigated 100 percent.

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. 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.

Northern Indiana Public Service Co. 3

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. Accordingly, your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be released to the public and placed in the NRC Public Document Room.

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, Public Law No. 96-511.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward A. Martin" followed by a stylized flourish.

John B. Martin
Regional Administrator

License No. 13-14984-01
Docket No. 030-08362

Enclosure: Notice of Violation and
Proposed Imposition of Civil Penalty

cc w/encl: L. Nemcek

NOTICE OF VIOLATION

Northern Indiana Public Service Company
South Bend, Indiana

Docket No. 030-08362
License No. 13-14984-01
EA 94-218

During an NRC inspection conducted September 7 through October 12, 1994, violations of NRC requirements were identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

- I. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access, licensed materials that are stored in unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on or about June 1994, the licensee did not secure from unauthorized removal or limit access to licensed material consisting of 13 millicuries (480 MBq) of cesium-137 in a sealed source contained in an Ohmart Model RA-1 source housing located in the Unit 14/15 Coal Handling Sample House, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. (01013)

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

- II. 10 CFR 20.2201(a)(1)(i) requires that each licensee immediately report to the NRC Operations Center by telephone after it becomes known to the licensee that a quantity of cesium-137 in excess of 10 millicuries (370 MBq) is lost, stolen, or missing, under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, as of August 23, 1994, the licensee did not notify the NRC Operations Center after the licensee discovered on, or about, August 12, 1994, that 13 millicuries (480 MBq) of cesium-137 were lost or missing. (02014)

This is a Severity Level IV violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Northern Indiana Public Service Company is hereby required to submit a written statement or explanation to the Regional Administrator, Region III, with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, 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

Notice of Violation

- 2 -

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 the 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.

Dated at Lisle, Illinois
this 17 day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

NOV 7 1994

EA 94-213

Penn Inspection Company
ATTN: Wade Penn, President
P.O. Box 520
Chickasha, Oklahoma 73023-0520

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report 030-19836/94-02)

This refers to the NRC's September 14 - October 7, 1994, inspection, which was conducted in response to your August 15, 1994, written report to the NRC regarding an occupational exposure that exceeded NRC's annual limit of 5 rems. The NRC issued a report describing its inspection on October 21, 1994. On October 31, 1994, you and a consultant attended an enforcement conference with NRC representatives in the NRC's offices in Arlington, Texas. A list of enforcement conference attendees is enclosed.

The violation in the enclosed Notice of Violation involves a failure to comply with 10 CFR 20.1201, which limits the annual occupational radiation exposure of individuals to 5 rems total effective dose equivalent. Specifically, a radiographer employed by Penn Inspection Company received 4.95 rems in a one-month period, as indicated on the film badge that he wore. When added to his previous exposure in 1994, it resulted in his receiving a cumulative exposure of 6.49 rems.

As discussed at the enforcement conference, the exposure indicated by the film badge was inconsistent with the exposures recorded by the radiographer on a daily basis using pocket dosimeter readings. Penn Inspection Company performed a thorough investigation of this matter and was unable to determine a possible cause of this exposure. Penn Inspection Company's conclusion was that the exposure indicated on the badge, while it could not be explained, was not received by the radiographer.

The NRC has considered Penn Inspection Company's arguments and acknowledges your reasoning in taking the position that you have based on your investigation of this matter. However, absent a rational explanation for the 4.95-rem badge exposure, the NRC cannot conclude other than that the exposure was received by the individual who wore the badge for the month in question. Because the very purpose of NRC's radiation safety requirements is to prevent such exposures from occurring, the NRC considers any exposure in excess of the limits a significant matter; therefore, this violation has been categorized at Severity Level III.

In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, a civil penalty is considered for a Severity Level III violation. However, I have been authorized not to propose a civil penalty in this case based on the application of the civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy. Specifically, Penn Inspection Company's good past performance, based on prior NRC inspections, was the basis for mitigating the civil penalty in full. The remaining adjustment factors were considered but no further adjustments were considered to be warranted.

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, 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, its enclosures, 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. 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 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,

L. J. Callan
Regional Administrator

Docket No. 030-19836
License No. 35-21144-01
EA 94-213

Enclosures:

- 1) Notice of Violation
- 2) Enforcement Conference Attendees

NOTICE OF VIOLATION

Penn Inspection Company
Chickasha, Oklahoma

Docket No. 030-19836
License No. 35-21144-01
EA 94-213

During an NRC inspection conducted September 14 - October 7, 1994, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 20.1201(a)(1)(i) requires, with exceptions not applicable here, that the licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent.

Contrary to the above, in calendar year 1994, the licensee did not limit the annual occupational dose to an adult radiographer to 5 rems total effective dose equivalent. Specifically, a radiographer employed by the licensee received an occupational dose of 6.49 rems, total effective dose equivalent, for the period January 1 through August 19, 1994.

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

Pursuant to the provisions of 10 CFR 2.201, Penn Inspection Company 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, Region IV, 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 the 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.

Dated at Arlington, Texas
this 7th day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 23, 1994

EA 93-058

University of Missouri - Columbia
ATTN: Dr. James J. Rhyne, Director
Research Reactor Facility
Operations
Research Park
Columbia, Missouri 65201

Dear Dr. Rhyne:

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION
(NRC INSPECTION REPORT NOS. 50-186/93001(DRSS); 50-186/94002(DRSS))

This refers to two NRC inspections conducted on March 9 through 11, 1993, and August 15 through 19, 1994, respectively, at the Missouri University Research Reactor (MURR) facility. The inspections included a review of: (1) shipments of radionuclides with other irradiation byproduct radionuclides which were neither identified on the shipping papers nor properly labeled; and (2) the shipment of a package which had an excessive external radiation level when it arrived at its destination. The reports documenting the inspections were sent to you by letters dated April 2, 1993, and September 21, 1994, respectively. During the inspections, apparent violations of NRC requirements were identified.

An open enforcement conference was conducted in the Region III office on September 29, 1994, to discuss the apparent violations, their causes, and your corrective actions. The report summarizing the conference was sent to you by letter dated October 28, 1994.

The first issue involves shipments of radionuclides with other irradiation byproduct radionuclides which were neither identified on the shipping papers nor properly labeled. In response to two previous escalated enforcement actions involving the shipment of radionuclides to the wrong recipients (EA 91-113 and EA 92-170), you began a global review of your shipping program. In a Demand for Information (DFI) dated December 2, 1992, we requested the results of your global review including lessons learned and recommendations for improving control over the preparation and shipment of radioactive materials produced by MURR for off-campus recipients.

In a January 15, 1993 response to the DFI, MURR identified that during the Irradiation Subcommittee review, the Service Applications group identified 17 irradiation targets where 90 percent of the total activity had not been reported. The most significant case, which occurred on December 14, 1992, was an example where both inaccurate target description and MURR acceptance of requester calculations of major activities led to deficient reporting of radioactive material shipped. Specifically, a major user of irradiated ytterbium (Yb) that was primarily interested in Yb-169, ordered Yb-169 and was shipped the product labeled as Yb-169. However, you later conservatively

calculated that up to 5 curies of Yb-175, a much greater activity level at the time of shipment than the radionuclide of interest (Yb-169), may have been produced in the target.

Violation A in the enclosed Notice of Violation (Notice), which involves delivering the December 14, 1992 package containing Yb-175 to a carrier for transport without including the radionuclide and activity on the shipping papers and the radioactive label which was contrary to 10 CFR 71.5(a) and 49 CFR Parts 203 and 403, has been categorized as a Severity Level III violation. The root cause of the violation was your acceptance of customer's calculations of major radionuclide activities to be produced in their targets, without comparing them to your own calculations of expected activities. Noncompliance with shipping paper and labeling requirements is significant because proper shipping papers and labeling allow civil authorities, in case of an accident during transport, to properly identify the type, quantity, and form of material; allow the carrier and recipient to exercise adequate controls; and allow the carrier and recipient to minimize the potential for overexposure, contamination, and improper transfer of material.

Normally a civil penalty would be considered for Violation A because it involves significant noncompliance with shipping paper and labeling requirements. However, after consultation with the Director, Office of Enforcement, the NRC has decided to exercise enforcement discretion pursuant to Section VII.B(5) of the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, and not issue a civil penalty in this case to encourage you to aggressively self-identify and take corrective action for violations.

However, in reaching this decision, the staff strongly considered issuance of a civil penalty in view of the discrimination that occurred against the persons identifying the safety issue. The discrimination against the two individuals involved in the identification of this violation was the subject of a separate Notice of Violation and Proposed Imposition of Civil Penalties - \$8,000 (EA 94-121) which was issued on September 12, 1994. We have reviewed your responses to EA 94-121 dated October 7, 1994 and October 31, 1994, and the responses of your employees dated October 27, 1994, and October 28, 1994. It appears that you now recognize the importance of employees being free to raise safety issues and you are taking action to encourage safety concerns to be raised. Therefore, we concluded that an additional civil penalty for this matter is not warranted. It is our expectation that you will proceed to develop a quality-conscious environment where personnel at all levels are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance and immediacy of the problem, investigated, and appropriately resolved with timely feedback to the concerned employee. If these expectations are not met and future retaliation occurs, you can expect stronger enforcement action.

We acknowledge your corrective actions for the Yb transportation violation which included: (1) notifying the affected customers to ensure that they were aware that they had been receiving unexpected byproduct radionuclides; (2) requesting your customers of irradiation services to certify isotopic enrichment of targets and identify any impurities or encapsulation that could

result in reportable shipping activity; (3) listing expected byproduct radionuclides, regardless of the customer identifying them on the irradiation requests; (4) screening all packages with a sodium iodide detector prior to shipment; (5) investigating the use of computer codes to generate lists of radionuclide activities for each target; and (6) creating a new supervisory position in the Service Applications group to direct the group reviewing irradiation requests. On May 17, 1993, an amendment to your license was issued which added a technical specification requirement to have written procedures for the shipping of byproduct material produced under the reactor license.

We expect you to be in full compliance with NRC requirements since sufficient time has elapsed since the completion of your global review and implementation of your corrective actions. We must also emphasize that any similar transportation violations in the future could result in escalated enforcement action.

The second issue involves a package containing radioactive materials which was shipped on May 5, 1994, from MURR to Scientific Ecology Group (SEG), a radioactive waste processing facility located in Tennessee. The highest radiation level on the external surface of the package at the time of shipment was 111 millirem per hour (mrem/hr). Upon arrival at SEG, the radiation level on the external bottom surface had increased to 600 to 800 mrem/hr because several parts (roller bearings, piece of spring steel, and washer) had loosened and fallen to the bottom of the package.

Violation B in the enclosed Notice involves the failure to ensure that a package of radioactive materials offered for transportation was designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package. The root cause of the violation was inadequate procedures and training for packaging radioactive waste materials.

Violation B would normally have been categorized at Severity Level III because the external radiation levels were in excess of one but not more than five times the Department of Transportation limit. However, the potential for personnel receiving a significant exposure was minimal due to the inaccessibility of the bottom of the package and, although this was not an exclusive use shipment, all radiation levels at the package destination were within the limits for an exclusive use shipment. Furthermore, no intermediate unloading or loading of the transport vehicle occurred during shipment. Therefore, Violation B has been categorized at Severity Level IV.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. You do not need to provide a response for Violation A. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence concerning Violation B. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. 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, 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. 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 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,

A handwritten signature in cursive script, appearing to read "J. B. Martin", followed by a small flourish.

John B. Martin
Regional Administrator

Docket No. 50-186
License No. R-103

Enclosure: Notice of Violation

cc w/enclosure:
DCD/DCB(RIDS)
OC/LFDCB
Dr. William Vernetson, Director
of Nuclear Facilities

NOTICE OF VIOLATION

University of Missouri-Columbia
Missouri University Research Reactor

Docket No. 50-186
License No. R-103
EA 93-058

During an NRC inspection conducted on March 9 through 11, 1993, and August 15 through 19, 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. Violation Not Requiring a Licensee Response

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 172.203(d) requires, in part, that the description for a shipment of radioactive material include the name of each radionuclide and the activity contained in each package of the shipment in terms of curies, millicuries, or microcuries.

49 CFR 172.403 requires, in part, with exceptions not applicable here, that each package of radioactive material be labeled with two RADIOACTIVE labels on opposite sides of the package. The contents and activity must be entered in the blank spaces on the labels.

Contrary to the above, on December 14, 1992, the licensee delivered to a carrier for transport a package containing 5 curies of ytterbium-175, and the description on the shipping paper that accompanied the shipment did not include the name and activity of the radionuclide, and the RADIOACTIVE labels on the package did not identify the contents and activity of the Ytterbium-175. (01013)

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

B. Violation Requiring a Licensee Response

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.441(a) requires, in part, with exceptions not applicable here, that each package of radioactive materials offered for transportation be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does

Notice of Violation

- 2 -

not exceed 200 millirem per hour at any point on the external surface of the package.

Contrary to the above, on May 5, 1994, the licensee delivered to a carrier for transport radioactive materials (a decommissioned irradiator case) in a package that was not designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package. Specifically, the package arrived at its destination with a radiation level of approximately 600 to 800 millirem per hour on the bottom external surface. (02014)

This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, University of Missouri-Columbia (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of 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 Demand for Information may be issued as to why the 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.

Dated at Lisle, Illinois
this 23 day of November 1994

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

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Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (October - December 1994) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to Material Licensees (non-Medical) 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, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

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