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Reactor Licensees

Enforcement Actions: Significant Actions Resolved Reactor Licensees

Quarterly Progress Report
October-December 1994

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U.S. Nuclear Regulatory Commission
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MASTER

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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 reactor licensees 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
REACTOR LICENSEES

October - December 1994

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform NRC reactor licensees about significant enforcement actions and their resolution for the fourth quarter of 1994. Enforcement actions are issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operation and Research (DEDR), and the Regional Administrators. The Director, Office of Enforcement, may act for the DEDR in the absence of the DEDR 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 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 reactor licensees, arranged alphabetically. Part C includes copies of Notices of Violation that were issued to reactor licensees for a Severity Level I, II, or III violation, but for which no civil penalties were assessed. Part D includes a copy of a Notice of Violation that was issued to a non-licensed vendor for a Severity Level II violation, 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

Carolina Power & Light Company, Hartsville, South Carolina
(H. B. Robinson Steam Electric Plant, Unit 2), Supplement I, EA 94-205

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$100,000 was issued November 28, 1994, to emphasize the importance of ensuring control over operational activities affecting safe plant operations. The action was based on violations that were indicative of weaknesses in management oversight and attention to detail associated with conducting plant cooldowns. The rate of cooldown of the RCS Pressurizer was not monitored such that technical specifications cooldown limits associated with the pressurizer were exceeded 16 times since 1980. The licensee responded and paid the civil penalty on December 27, 1994.

Commonwealth Edison Company, Downers Grove, Illinois
(Quad Cities Station, Units 1 and 2), Supplement IV, EA 94-186

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$100,000 was issued October 18, 1994, to emphasize that deliberate violations cannot and will not be tolerated and the need for Quad Cities management to establish and maintain a high level of employee awareness and respect for management expectations. The action was based on a violation involving the apparent deliberate actions on the part of worker(s) that resulted in a significant source of external radiation exposure. Specifically, a strontium-90 beta source was deliberately and forcibly removed from its mounted plant location and placed in the pocket of a female radiation worker. The worker alarmed exit monitors and surveys were successful in locating and removing the source. The period of exposure was estimated at 12 minutes and the exposure was estimated to be about 22 rem. The licensee responded and paid the civil penalty on November 16, 1994.

Commonwealth Edison Company, Downers Grove, Illinois
(Quad Cities Station, Units 1 and 2), Supplement VII, EA 94-188

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$80,000 was issued October 12, 1994, to emphasize the need for management expectations regarding fitness-for-duty to be fully understood by all personnel working at the Quad Cities Station, and the need for prompt action when an individual's fitness-for-duty is determined to be questionable. The action was based on the failure to promptly suspend an individual's unescorted access and test him for cause following reports by two employees that the individual appeared to be under the influence of alcohol. The licensee responded and paid the civil penalty of November 7, 1994.

PECO Energy Company, Wayne, Pennsylvania
(Peach Bottom Atomic Power Station), Supplement I, EA 94-197

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$87,500 was issued November 21, 1994, to emphasize the importance of (1) appropriate coordination between operations and maintenance personnel, (2) establishment of appropriate procedural controls during the conduct of maintenance activities, to ensure that safety equipment is appropriately maintained, and (3) operations maintaining control of such evolutions rather than deferring this responsibility to maintenance. The action was based on an inspection which identified problems with the licensee's control of maintenance and testing at the facility. During motor-operated valve diagnostic testing activities, the licensee's staff failed to adequately control the positioning of an emergency service water (ESW) valve that provided a flowpath for ESW return to the ultimate heat sink (UHS). As a result, the ESW system was unknowingly placed in a configuration that was outside of the design base, such that under design UHS thermal conditions, the ESW system would not have been able to perform its safety-related function. The licensee responded and paid the civil penalty on December 21, 1994.

Public Service Electric and Gas Company, Newark, New Jersey
(Salem Nuclear Generating Station), Supplement I, EA 94-112

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$500,000 was issued October 5, 1994, to emphasize the importance that the NRC places on the need for each licensee to identify conditions adverse to quality, determine the root causes, and promptly effect lasting, comprehensive corrective actions rather than tolerating degraded conditions and workarounds. The action was based on four violations identified by the NRC as a result of an AIT and a later followup inspection of plant events on April 7, 1994, including an automatic reactor trip and two automatic actuations of the Safety Injection system. The violations, three of which are considered to be continuing violations, involve the failure to identify and correct conditions adverse to quality including inadequate procedures and known equipment deficiencies. Instead of correcting the known problems, the licensee was found to have developed numerous "workarounds" which during the event unnecessarily complicated plant transients, challenged safety systems, and impacted operator response. Additionally, both senior reactor operators failed to exercise command and control during the event. The licensee responded and paid the civil penalty on November 4, 1994.

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

Burns International Security Services, Inc., Naperville, Illinois
at Florida Power Corporation's Crystal River Nuclear Plant
Supplement VII, EA 94-135

A Notice of Violation was issued October 11, 1994, to emphasize the importance of ensuring that employees who raise real or perceived safety concerns are not subject to discrimination for raising such concerns and that every effort is made to provide an environment in which all employees may freely identify safety concerns without fear of retaliation or discrimination. The action was based on an investigation that concluded that Burns management wrongfully discharged an employee after the individual had notified them of an alleged violation of NRC requirements. The NRC was concerned about the potential chilling effect the termination of the individual may have had on other Burns employees. The chilling effect may have been mitigated by the fact that the individual was reinstated; however, this action was not taken without the intervention of Florida Power Corporation which promptly investigated the matter and required the contractor to take corrective action.

Carolina Power and Light Company, New Hill, North Carolina
(Shearon Harris Nuclear Power Plant), Supplement I, EA 94-204

A Notice of Violation was issued November 17, 1994, based on a violation involving inadequate design control for the ESW system in that a single failure in the system could result in the loss of ESW train independence. A civil penalty was not issued because the licensee identified the violation, took prompt and extensive corrective actions

following the identification, and the licensee's good past performance balanced against the fact that the licensee failed to identify this violation during a prior opportunity in a Generic Letter 89-13 review of the ESW system.

Entergy Operations, Inc., Russellville, Arkansas
(Arkansas Nuclear One), Supplement III, EA 94-161

A Notice of Violation was issued December 7, 1994 based on violations relating to two access authorization events that the licensee discovered and reported to the NRC and include: (1) granting unescorted access to an individual who had been convicted of a felony in the past five years; (2) failing to promptly suspend unescorted access for another individual when adverse reliability information became available from a check of the individual's criminal background information; and (3) failing to report the first event to the NRC within one hour of its discovery. A civil penalty was not issued because the licensee: (1) discovered the access authorization failure; (2) took prompt corrective action to revoke access and developed broad corrective actions to address underlying weaknesses; and (3) performance in security has been excellent, earning SALP category 1 ratings in each of the last two rating periods.

D. Non-Licensed Vendor (Part 21), No Civil Penalty

Rosemount Nuclear Instruments, Incorporated, Chanhassen, Minnesota
Supplement VII, EA 94-049

A Notice of Violation was issued November 15, 1994 based on an inspection to follow up on an NRC concern regarding an oil-loss problem identified in Rosemount Model 1150-series pressure transmitters. The oil-loss problem could have resulted in undetectable degraded operation of Rosemount nuclear safety-related pressure transmitters. Based on that inspection and on the findings of an investigation, certain of the activities were found to be in violation of 10 CFR Part 21.

A. INDIVIDUAL ACTIONS

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

AUG 26 1994

IA 94-020

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

Dear Mr. Bauman

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

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

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

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

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,

A handwritten signature in cursive script, appearing to read "James Lieberman".

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Paul A. Bauman

)
)
)
)

IA 94-020

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

I

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

II

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

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

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

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

Between late 1989 and March 1, 1992, Mr. Bauman deliberately caused AMSPEC to violate 10 CFR 34.31 by failing to train and certify numerous radiography employees of AMSPEC as required and caused ASMPEC 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

)
)
)
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/encls:

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

SYNOPSIS

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

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

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
JERMOE E. BODIAN, M.D.	)	Docket No. 030-02551
Englewood, New Jersey	)	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 disfunction. 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

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IA 94-015

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

I

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

II

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

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

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

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

III

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

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

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

IV

Accordingly, pursuant to sections 81, 161b, 161c, 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,

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

'94 AUG 18 P2 28

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the matter of

NUCLEAR SUPPORT SERVICES, INC.

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

ROBERT C. DAILEY

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

Docket Nos. EA 93-236
IA 94-003

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

SERVED AUG 18 1994

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.

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, NRC 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

Page 3 of 3
August 10, 1994

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

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

FOR 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

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)
)
)

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 NRC 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

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

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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, 1611, 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.

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 28 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)

IA 94-008

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

I

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

II

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

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

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

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

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

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

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

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

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

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

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

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

III

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

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

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Miller were permitted at this time to be engaged in the performance of NRC-licensed and

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

IV

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

- A. Mr. Miller is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.

- B. Should Mr. Miller seek employment in non-licensed activities with any person engaged in NRC-licensed activities for three years from the date of this Order, Mr. Miller shall provide a copy of this Order to such person at the time Mr. Miller is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting NRC-licensed activities pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

- C. For three years from the date of this Order, Mr. Miller shall provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities for an employer engaged in NRC-licensed activities described in Paragraph IV.B, above.

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

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

V

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

Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Miller, if the answer or hearing request is by a person other than Mr. Miller. If a person other than Mr. Miller requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

October 31, 1994

IA 94-031

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,

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 ~~26~~²⁸ 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

2

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

Sincerely,

James Lieberman, 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.

2

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

Sincerely,

James Lieberman, 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

)
)
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)
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, 161f, 161g, 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 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 2nd day of April 1994

B. REACTOR LICENSEES, CIVIL PENALTIES AND ORDERS

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

November 28, 1994

EA 94-205

Carolina Power & Light Company
ATTN: Mr. C. S. Hinnant
Vice President
H. B. Robinson Steam Electric Plant
Unit 2
Post Office Box 790
Hartsville, SC 29550-0790

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$100,000 (NRC INSPECTION REPORT NO. 50-261/94-23)

Dear Mr. Hinnant:

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Mr. William T. Orders on August 21 - September 24, 1994. The inspection included a review of your failure to maintain pressurizer cooldown rates within the limits of Technical Specification 3.1.2.3 and your failure to maintain containment integrity in accordance with Technical Specification 3.6.1 while operating at power. These deficiencies were reported in Licensee Event Reports 261/94-019 and 261/94-020, respectively, in accordance with 10 CFR 50.73(a)(2)(i) and (ii). As a result of the NRC inspection, violations of NRC regulatory requirements were identified. The report documenting the NRC inspection was sent to you by letter dated October 5, 1994. An enforcement conference was conducted in the NRC Region II office on October 17, 1994, to discuss the violations, their cause, and your corrective actions to preclude recurrence. A summary of this conference was sent to you by letter dated October 28, 1994.

The violation described in Part I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involves the failure to maintain the pressurizer cooldown rate within the Technical Specification 3.1.2.3 limit of 200 degrees Fahrenheit per hour. The violation resulted from the inadequate guidance on a precaution statement in a general operating procedure for plant cooldown. The procedure did not specifically require formal monitoring of the pressurizer temperature over time and operators were not trained to monitor pressurizer cooldown. At the enforcement conference, you indicated that the operating crew did not routinely monitor pressurizer cooldown, based on an assumption that its cooldown was enveloped by the cooldown of the reactor vessel, and that cooldown limits were exceeded 16 times since 1980.

With regard to Violation I, the NRC is concerned that the technical specification limit for pressurizer cooldown may have been exceeded repeatedly during cooldowns conducted since 1980. This points to a lack of management attention concerning a licensed activity. In addition, the violation is similar to a violation issued on May 9, 1994, for a November 14, 1993 event discussed in NRC Inspection Report 261/93-34. In this event, the lack of

specific procedural requirements also led to the failure of the operating crew to monitor instrumentation readings and resulted in a technical specification limit being exceeded. We also are concerned that your operating experience program failed to ensure that adequate corrective action was taken when you were advised of a similar event at your Harris facility involving a technical specification violation for pressurizer heatup rates being exceeded. 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 NRC recognizes that specific corrective actions were taken in response to the violation as discussed during the enforcement conference. Those actions included (1) revision of the operating procedures to specifically require monitoring of pressurizer cooldowns, (2) operator training; and, (3) counseling of the operating crews on technical specification compliance.

To emphasize the importance of ensuring control over operational activities affecting safe plant operations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$100,000 for the Severity Level III violation. The base value of a civil penalty for a Severity Level III violation is \$50,000.

The escalation and mitigation factors in the Enforcement Policy were considered. The base civil penalty was escalated 50 percent because the violation which you had a clear opportunity to identify earlier was discovered as a result of an NRC inspection and mitigated 50 percent for your good corrective actions after the violation was identified. Because of your poor enforcement history in the operations area and the three escalated enforcement actions issued to you since October 1992, escalation of 100 percent was warranted for the factor of licensee performance. The other adjustment factors in the Enforcement Policy were considered and no further adjustments to the civil penalty were appropriate. Therefore, the base civil penalty has been increased 100 percent.

Section II of the enclosed Notice describes two violations not assessed a civil penalty involving (1) the failure to establish containment integrity in accordance with Technical Specification 3.6.1 for 23 days while operating at power and (2) the failure to make necessary changes to both plant procedures and documents in order to correct a condition adverse to quality identified during development of the Containment Isolation Generic Issue Document issued January 1994, and a proposed revision to an operating procedure for control of containment isolation.

Violation II.A occurred when a senior reactor operator (SRO) failed to confirm that valves in a general operating procedure were in fact closed prior to initialing the procedure indicating they were closed (note that a separate enforcement action is being issued to the SRO). Six of these valves were later identified as containment isolation valves. Miscommunication of the procedural step to be performed and a careless lack of attention to detail on the part of the SRO contributed to the violation. In addition, we noted that

your review team report of this event found that an adverse condition previously identified by you in February 1994, which cited the potential for miscommunication with regard to manipulating the MSIV drain valves, had not been corrected. Failure to establish containment isolation would normally result in escalated enforcement but, in this case, the NRC has decided that containment isolation, while degraded, was not lost and that the violation is more appropriately classified as a Severity Level IV violation based on the following considerations: (1) the valves involved were in small two inch lines such that any accident releases would be below 10 CFR Part 100 limits; (2) other valves, though not classified as containment isolation valves, were closed during the period; (3) the closed valves were confirmed by you at the Enforcement Conference to have subsequently been analyzed to be able to fulfill the containment isolation safety function; and (4) the closed valves were not closed fortuitously, but rather had been confirmed closed at the time of the violation.

Violation II.B resulted from (1) the failure to appropriately generate adverse condition reports during engineering design document reviews; (2) the failure to perform detailed formal reviews of the engineering design documents in order to determine appropriate actions for ensuring that plant operations conformed to the design basis documents; and, (3) the failure to track and promptly implement changes to ensure that control of containment isolation valves met administrative control requirements. This resulted in the failure to provide the appropriate administrative controls for a large number of containment isolation valves.

We are concerned that the violations involved here could have been discovered and corrected earlier based on the information you had available from the Shearon Harris events and from your containment valve review. This problem was similar to that expressed in previous enforcement actions (EA 94-024 and EA 94-119) in that these violations involve inadequate reviews and reaction to previously identified problems and deficient conditions. Deficient conditions identified in your operating experience review program and your corrective action program were not resolved in a timely manner. In addition, you failed to conduct adequate reviews and tracking of action items to resolve deficiencies identified in self-assessments, notifications from vendors and design reviews. The failure to establish a formal review process and action item tracking method for your Design Basis Documents and Generic Issues Documents created the potential for other deficiencies to exist due to the informal review process. We are also concerned with the inattention to detail and performance related weaknesses on the part of licensed operators. Deficiencies of this type have been pointed out in other recent enforcement actions including the violations issued in NRC Inspection Report 261/93-34 (EA 94-024) and in NRC Inspection Reports 261/94-13, 15, 16, and 17.

NRC believes that it is important that CP&L take decisive action to reverse the negative trends in your operations area and ensure procedural compliance. We recognize that steps are being taken to improve performance and accountability. Additionally, it is expected that your proposed steps to improve your corrective action program will receive increased management oversight to ensure that critical assessments of potential adverse conditions

are promptly conducted and result in comprehensive and timely corrective actions.

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. Your response to Violation II.A should address actions, if any, that you have taken or will be taking to assure that this is an isolated failure that will not reoccur. 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 and its enclosure will be placed in the NRC Public Document Room (PDR). 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 PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that 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. Ebnetey
Regional Administrator

Docket No. 50-261
License No. DPR-23
EA 94-205

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

(cc w/encl: see next page)

cc w/encl:

D. E. Young
Plant Manager
H. B. Robinson Steam Electric Plant
P. O. Box 790
Hartsville, SC 29550

H. W. Habermeyer, Jr.
Vice President
Nuclear Services Department
Carolina Power & Light Company
P. O. Box 1551 - Mail OHS7
Raleigh, NC 27602

R. Krich, Manager
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H. B. Robinson Steam Electric Plant
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N. C. Department of Environmental
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Raleigh, NC 27602

Karen E. Long
Assistant Attorney General
State of North Carolina
P. O. Box 629
Raleigh, NC 27602

Robert P. Gruber
Executive Director
Public Staff - NCUC
P. O. Box 29520
Raleigh, NC 27626-0520

Public Service Commission
State of South Carolina
P. O. Box 11649
Columbia, SC 29211

The Honorable Hugh Wells, Chairman
North Carolina Utilities Commission
P. O. Box 29510
Raleigh, NC 27626-0510

Hartsville Memorial Library
147 W. College
Hartsville, SC 29550

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Carolina Power & Light Company
H. B. Robinson Steam Electric Plant
Unit No. 2

Docket No. 50-261
License No. DPR-23
EA 94-205

During an NRC inspection conducted on August 21 - September 24, 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 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:

I. Violation Assessed a Civil Penalty

Technical Specification 3.1.2.3 limits the maximum pressurizer cooldown rate to 200 degrees Fahrenheit per hour.

Technical Specification 6.5.1.1.1.a, requires that written procedures be established, implemented, and maintained covering applicable procedures recommended in Appendix "A" of Regulatory Guide 1.33, Rev. 2, February 1978. Appendix "A" of Regulatory Guide 1.33, recommends General Plant Operating Procedures.

General Procedure, GP-007, Plant Cooldown From Hot Shutdown To Cold Shutdown, Precaution and Limitation 3 specifies that the maximum pressurizer cooldown rate shall not exceed 200 degrees Fahrenheit per hour.

Contrary to the above, on February 26, 1994, the pressurizer cooldown rate exceeded 200 degrees Fahrenheit per hour when operators were collapsing the pressurizer bubble in accordance with GP-005. Pressurizer water space, steam space, and surge line cooldown rates all exceeded the Technical Specification limit with maximum cooldown rate observed approaching 240 degrees Fahrenheit per hour. Subsequent reviews indicated that pressurizer cooldown rates were exceeded 16 times since 1980.

This is a Severity Level III Violation (Supplement I).
Civil Penalty - \$100,000

II. Violations Not Assessed a Civil Penalty

- A. Technical Specification 3.6.1 requires that containment integrity be established whenever the reactor is not in a cold shutdown condition.

Technical Specification 6.5.1.1.1.a, requires that written procedures be established, implemented, and maintained covering applicable procedures recommended in Appendix "A" of Regulatory

Notice of Violation and Proposed - 2 -
Imposition of Civil Penalty

Guide 1.33. Rev. 2. February 1978. Appendix "A" of Regulatory Guide 1.33. recommends General Plant Operating Procedures.

General Procedure. GP-005, Power Operation. requires valves MS-19, MS-19A, MS-21, MS-28, MS-28A, MS-30, MS-37, MS-37A, and MS-39 (Before and After Seat Drain Valves) to be closed during plant startup.

Contrary to the above, from August 6, 1994, until August 29, 1994, while operating at power, containment integrity was not properly established and GP-005 was not implemented during plant startup in that the MSIV Before and After Seat Drain Valves, six of which are containment isolation valves, were open instead of closed.

This is a Severity Level IV Violation (Supplement I).

- B. 10 CFR 50, Appendix B, Criterion XVI, requires that measures be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected.

Contrary to the above, as of September 2, 1994, conditions adverse to quality were not promptly corrected, in that changes to plant documents to control certain containment isolation valves had not been promptly made. Specifically, 38 containment isolation valves listed in the Containment Isolation Generic Issue Document (GID), completed in January 1994, and a proposed revision to OP-923, Containment Integrity, were not being controlled as containment isolation valves.

This is a Severity Level IV Violation (Supplement I).

Pursuant to the provisions of 10 CFR 2.201, Carolina Power and Light 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 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 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.

Notice of Violation and Proposed - 3 -
Imposition of Civil Penalty

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, Atlanta, Georgia and a copy to the NRC Resident Inspector at the H. B. Robinson Steam Electric Plant.

Dated at Atlanta, Georgia
this ~~28th~~ day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 18, 1994

EA 94-186

Commonwealth Edison Company
ATTN: Mr. Michael J. Wallace
Vice President,
Chief Nuclear Officer
Executive Towers West III
1400 Opus Place, Suite 300
Downers Grove, Illinois 60515

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$100,000
(NRC Inspection Report Nos. 50-254/265/94021(DRSS))

Dear Mr. Wallace:

This refers to the inspection conducted during the period of August 15 through August 25, 1994, at Quad Cities Station, Units 1 and 2. The purpose of the inspection was to review the circumstances surrounding the deliberate exposure of an individual to a radiation source. During the inspection, violations of NRC requirements were identified. The report documenting this inspection was sent to you by letter dated September 8, 1994. An enforcement conference was held on September 23, 1994, to discuss the violations, their causes, and your corrective actions. The report documenting the conference was sent to you by letter dated September 30, 1994.

On August 8, 1994, an individual who had completed work in the Unit 1 turbine building within the radiologically controlled area (RCA) went to the change area, changed out of coveralls into personal clothing, and proceeded to the Unit 2 ground-level trackway RCA egress radiation monitoring station. The individual alarmed the whole body frisker and promptly reported the alarm to the radiation protection technician (RPT) at the station. The RPT did not find any contamination using a hand-held frisker, but did not survey the backside of the individual. The RPT inappropriately assumed that the individual may have had a medical radiation treatment or that low level contamination had rubbed off of her coveralls onto her personal clothing. The individual alarmed the whole body frisker again and the RPT again did not find any contamination. After alarming the whole body frisker a third time, the RPT sent the individual to the Unit 1 RCA access monitoring station. At that location, the individual alarmed two whole body friskers, and during the attempt to locate the source of radiation, the source was discovered in the individual's right back pants pocket and removed. The source was identified as a strontium-90 (Sr-90) beta check source used to functionally check hand-held radiation detection instruments. Subsequently, the source was determined to be missing from its holder that was bolted to a metal cabinet on the Unit 1 turbine building main floor.

Section I of the enclosed Notice of Violation and Proposed Imposition of Civil

Penalty (Notice) describes a violation involving the deliberate placement of the Sr-90 check source in the individual's pants in violation of License Condition 2.D. The final estimated skin dose to the individual was 22.17 rem. Fortunately, the individual's total skin dose was below the 50 rem regulatory limit; however, a slight difference in the individual's activities from that assumed after she donned her pants, or a change in the position of the source in her pants pocket could have resulted in a significant overexposure. This deliberate action resulted in a substantial potential for an overexposure. Also, the skin dose would have been less if the first RPT had performed an adequate survey and promptly located and removed the source.

In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, Violation I would normally be categorized at Severity Level III because it resulted in a substantial potential for an overexposure. However, because the violation was deliberate it was categorized at Severity Level II.

We acknowledge your completed corrective actions following the violation which included initiating a security investigation with FBI involvement, removing all Sr-90 check sources from unrestricted use in the plant, briefing RPTs on guidance for response to contamination events and incorporating this guidance in a procedure, placing an article in the station newspaper on expectations for employee conduct, upgrading Contractor Orientation and New Station Employee Training, and informing management at all Commonwealth Edison sites of the event. Your planned corrective actions include evaluating site-wide radiological hazards, enhancing General Employee Training, upgrading controls for sources, providing lessons-learned instruction at all Commonwealth Edison sites, and having all Commonwealth Edison site vice presidents issue letters reinforcing management expectations of employees and for radiation safety.

Nevertheless, we are particularly concerned that the deliberate placement of the radiation source in the individual's pants occurred in spite of recent company-wide corrective actions in response to the apparent deliberate contamination of the pants of two female workers at your LaSalle County Station. Furthermore, other significant problems at Quad Cities with radiation worker performance and with foreign material exclusion controls, both the subject of recent management meetings, indicate that management expectations have neither been effectively communicated nor met. The fact that such an event can and did occur at Quad Cities Station is further evidence of the lack of respect for radiological hazards and management expectations. To emphasize that deliberate violations cannot and will not be tolerated and the need for Quad Cities Station management to establish and maintain a high level of employee awareness and respect for management expectations, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$100,000. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered.

The base civil penalty for Violation I is \$80,000. The base civil penalty was

was mitigated 25 percent because you identified the violation as a result of a self-disclosing event. The base civil penalty was further mitigated 50 percent for your prompt comprehensive corrective actions as discussed above. With regard to licensee performance and prior notice, after the June 30, 1994 management meeting, we informed you of our concern that your radiological controls program needed substantial improvement and that continued, pertinent efforts on your part were necessary to ensure that lasting improvements were made. Commonwealth Edison's LaSalle facility was the subject of recent escalated enforcement action in the radiation protection area (EA 94-053, May 19, 1994), where we sought to make it clear that acts of deliberate contamination can not be tolerated and we emphasized the need for Commonwealth Edison to establish among its employees the appropriate regard for radiological safety and require strict compliance with good radiation safety practices, none of which was demonstrated in the instant case. Accordingly, the base civil penalty was escalated 100 percent to emphasize our concern over your poor performance in the radiological controls area even after notice of the need for caution and improvement in this area. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was appropriate. Therefore, based on the above, the base civil penalty for Violation I has been increased by 25 percent.

Section II of the enclosed Notice describes a violation not assessed a civil penalty involving the failure of the first RPT to perform an adequate survey. The violation was 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. 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 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. If personal privacy, proprietary, or safeguards information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

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, Public Law No. 96-511.

Sincerely,

John B. Martin
Regional Administrator

Docket Nos. 50-254; 50-265
License Nos. DPR-29; DPR-30
EA 94-186

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/enclosure:

E. Kraft, Site Vice President
J. C. Brons, Vice President,
Nuclear Support
S. Perry, Vice President, BWR Operations
G. Campbell, Station Manager
N. Chrissotimos, Regulatory Assurance
Supervisor
D. Farrar, Nuclear Regulatory
Services Manager
OC/LFDCB
Resident Inspectors LaSalle
Dresden, Quad Cities
Richard Hubbard
Nathan Schloss, Economist
Office of the Attorney General
Licensing Project Manager, NRR
State Liaison Officer
Chairman, Illinois Commerce
Commission
S. Shelton, Vice President, Electric
Operation, IA-IL Gas & Electric
T. O. Martin, RIII
IPAS (E-Mail)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Commonwealth Edison Company
Quad Cities Station
Units 1 and 2

Docket Nos. 50-254; 50-265
License Nos. DPR-29; DPR-30
EA 94-186

During an NRC inspection conducted from August 15 through August 25, 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 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:

I. Violation Assessed a Civil Penalty

License Condition 2.D authorizes the licensee, in part, to receive, possess, and use at any time any byproduct, source and special nuclear materials as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts required.

Contrary to the above, the licensee failed to ensure that byproduct material was controlled and was possessed and used in accordance with the terms of the license. Specifically, on August 8, 1994, a sealed radiation check source of strontium-90 was deliberately removed from its holder mounted in the Unit 1 Turbine Building and placed in an individual's clothing, a use not authorized by the license condition. (01012)

This is a Severity Level II violation (Supplement IV).
Civil Penalty: - \$100,000.

II. Violation Not Assessed a Civil Penalty

10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, on August 8, 1994, the licensee did not make adequate surveys to assure compliance with 10 CFR 20.1201 which limits, in part, the annual shallow-dose equivalent to the skin to 50 rems (0.50 Sv). Specifically, a hand-held frisker survey of a radiation worker by a radiation protection technician was limited to the radiation worker's front side and was not performed on the radiation worker's back side, although the radiation worker had set off whole body alarms. The radiation protection technician did not locate a radiation source which was in the worker's back pants pocket. (02014)

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

Pursuant to the provisions of 10 CFR 2.201, Commonwealth Edison Company (Licensee) is hereby required to submit a written statement of 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 actions 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 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 234(c) of the Act, 42 U.S.C. 2282c.

The responses 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 III, 801 Warrenville Road, Lisle, Illinois 60532-4351, and a copy to the NRC Resident Inspector at the Quad Cities Station.

Dated at Lisle, Illinois
this 18th day of October 1994

EA 94-188

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

October 12, 1994

Commonwealth Edison Company
ATTN: Mr. Michael J. Wallace
Vice President,
Chief Nuclear Officer
Executive Towers West III
1400 Opus Place, Suite 300
Downers Grove, IL 60515

Dear Mr. Wallace:

SUBJECT: QUAD CITIES STATION - UNITS 1 AND 2
NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$80,000
(NRC INSPECTION REPORT NOS. 50-254/265/94018(DRSS))

This refers to the inspection conducted during the period of May 2 through August 29, 1994, at Quad Cities Station, Units 1 and 2. The purpose of the inspection was to review the circumstances surrounding the Operations Manager reporting to work while under the influence of alcohol. During the inspection, violations of NRC requirements were identified. The report documenting this inspection was sent to you by letter dated September 7, 1994. This event was initially discussed in a meeting, held at your request, at the NRC Region III office on May 2, 1994. An enforcement conference was held on September 23, 1994, to discuss the violations, their causes, and your corrective actions. The report documenting the conference was sent to you by letter dated October 3, 1994.

On April 23, 1994, the Operations Manager voluntarily reported to work after receiving a phone call from the on-duty Shift Engineer concerning a plant transient and entered the protected area at 9:03 p.m. that day. Both the Unit 1 and Unit 2 supervisors independently believed they smelled alcohol on the Operations Manager's breath and independently reported their observations to the Shift Engineer at about 9:50 p.m. At 10:30 p.m., the Shift Engineer confronted the Operations Manager with the observations of the two supervisors. At that time, the Shift Engineer incorrectly concluded that the Operations Manager was not an immediate safety/security problem because he had stated that he only had one beer and exhibited no obvious signs of aberrant behavior. The Shift Engineer partially reviewed the testing-for-cause procedure and concluded that a for-cause test was required but did not recognize that the procedure required testing within one hour. After consulting the Station Manager by telephone on three occasions, the Shift Engineer escorted the Operations Manager out of the protected area at 1:08 a.m. on April 24, 1994. Between 1:15 and 2:00 a.m., the Operations Manager tested positive for alcohol and his site access was immediately suspended. The Operations Manager subsequently resigned his employment with Commonwealth Edison.

Section I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) describes two violations assessed a civil penalty. The violations involve: (1) failure to suspend the Operations Manager's unescorted access to the protected area after determining that his fitness may be

questionable; and (2) failure to implement for-cause testing as soon as possible after receiving credible information that the Operations Manager was under the influence of alcohol while unescorted in the protected area.

The root cause of the violations was poor judgement by the Shift Engineer and the failure of management to ensure that its expectations regarding fitness-for-duty are fully understood and properly implemented by all personnel working at the Quad Cities station. The violations are very significant because your fitness-for-duty program must provide reasonable assurance that nuclear power plant personnel, particularly management personnel, will perform their tasks in a reliable and trustworthy manner, free from the influence of any substance which affects their ability to safely and competently perform their duties.

The violations represent a failure to take reasonable and timely action when credible information concerning activities within the protected area indicates possible unfitness for duty based on alcohol use. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, these violations are classified in the aggregate as a Severity Level II problem.

We acknowledge your corrective actions for the violations, which included supplemental training for Quad Cities personnel on all aspects of the fitness-for-duty program, counselling the Shift Engineer, and having the Shift Engineer review the fitness-for-duty policy and lessons-learned from the event with all other shift engineers. Your programmatic and long-term corrective actions included a determination that the fitness-for-duty training program is satisfactory, and your communication of this event in writing to all Nuclear Division employees with emphasis on fitness-for-duty expectations and incorporation of this communication into training. However, your proposed corrective actions at the time of the conference did not include revising the fitness-for-duty procedure to provide additional emphasis that removal from unescorted access and testing within one hour were required when credible information is received that an individual's fitness may be questionable.

To emphasize the need for management expectations regarding fitness-for-duty to be fully understood by all personnel working at the Quad Cities Station, and the need for prompt action when an individual's fitness-for-duty is determined to be questionable, I have been authorized after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$80,000 for the Severity Level II problem. The base value of a civil penalty for a Severity Level II problem is \$80,000. The civil penalty adjustment factors in the Enforcement Policy were considered.

The base civil penalty was not mitigated for identification because, while the licensee identified the event -- a manager under the influence of alcohol -- it failed to identify the violation involving the delay in testing. Furthermore, the base civil penalty was not mitigated for your corrective actions because you failed to emphasize through procedural revision that for-cause testing cannot be delayed. No adjustment to the base civil penalty was

made for your performance because even though your performance in the security and fitness-for-duty areas has been good, your overall performance has been poor as reflected by the most recent SALP 11 report and four escalated actions being issued in the last two years. The other adjustment factors in the Enforcement Policy were considered, and no other adjustment to the base civil penalty was appropriate. Therefore, no adjustment to the base civil penalty has been deemed appropriate.

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 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. If personal privacy, proprietary, or safeguards information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information).

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, Public Law No. 96-511.

Sincerely,

John B. Martin
Regional Administrator

Docket Nos. 50-254; 50-265
License Nos. DPR-29; DPR-30

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/enclosure:

E. Kraft, Site Vice President

J. C. Brons, Vice President,

Nuclear Support

S. Perry, Vice President, BWR Operations

G. Campbell, Station Manager

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Supervisor

D. Farrar, Nuclear Regulatory
Services Manager

OC/LFDCB

Resident Inspectors LaSalle

Dresden, Quad Cities

Richard Hubbard

Nathan Schloss, Economist

Office of the Attorney General

Licensing Project Manager, NRR

State Liaison Officer

Chairman, Illinois Commerce
Commission

S. Shelton, Vice President, Electric
Operation, IA-IL Gas & Electric

T. O. Martin, RIII

IPAS (E-Mail)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Commonwealth Edison Company
Quad Cities Station
Units 1 and 2

Docket Nos. 50-254; 50-265
License Nos. DPR-29; DPR-30
EA 94-188

During an NRC inspection conducted from May 2 through August 29, 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 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 26.27(b)(1) requires, in part, that those workers whose fitness may be questionable be removed from activities within the scope of this part.

Contrary to the above, from 9:50 p.m. on April 23, 1994, until 1:08 a.m. on April 24, 1994, the licensee failed to remove the Operations Manager from licensed activities in that he was still permitted unescorted access to the protected area even though two individuals had reported to the Shift Engineer the smell of alcohol on the breath of the Operations Manager. (01012)

- B. 10 CFR 26.24(a)(3) requires, in part, that the licensee implement testing for cause as soon as possible after receiving credible information that an individual is abusing alcohol.

Quad Cities procedure QCAP 890-7, Section D.2(d) states that "for cause testing" should be accomplished by management within one (1) hour.

Contrary to the above, the licensee did not implement testing for cause as soon as possible after receiving credible information that the Operations Manager, who was unescorted in the protected area, had abused alcohol. The credible information was initially received at about 9:50 p.m. on April 23, 1994 and testing for cause was not conducted until about 1:15 a.m. on April 24, 1994. (01022)

This is a Severity Level II problem (Supplement VII).
Civil Penalty - \$80,000.

Pursuant to the provisions of 10 CFR 2.201, Commonwealth Edison Company (Licensee) is hereby required to submit a written statement of 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 to show cause why the license should not be modified, suspended, or revoked or why such other actions 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 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.

In requesting mitigation of the proposed penalty, the factors addressed in Section V.B 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 responses 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 III, 801 Warrenville Road, Lisle, Illinois 60532-4351, and a copy to the NRC Resident Inspector at the Quad Cities Station.

Dated at Lisle, Illinois
this 12 day of October 1994

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

November 21, 1994

EA 94-197

Mr. D. M. Smith
Senior Vice President - Nuclear
PECO Energy Company
Nuclear Group Headquarters
Correspondence Control Desk
Post Office Box 195
Wayne, Pennsylvania 19087-0195

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$87,500
(NRC Combined Inspection Report Nos. 50-277/94-24 and
50-278/94-24)

Dear Mr. Smith:

This refers to the NRC inspection conducted on September 7-14, 1994, at the Peach Bottom Atomic Power Station in Delta, Pennsylvania. This inspection included an examination of the circumstances surrounding the August 3, 1994, isolation of the emergency service water (ESW) system normal return to the ultimate heat sink. The report documenting this inspection was sent to you on September 29, 1994, and violations of NRC requirements were identified. On October 18, 1994, an enforcement conference was conducted with you and other members of your staff to discuss the violations, their causes, and your corrective actions.

On August 3, 1994, your staff had unknowingly placed the ESW system in an unanalyzed configuration that prevented safety-related equipment from receiving cooling water at the design flow rate. Specifically, maintenance personnel shut, de-energized, and left MO-498, the ESW system discharge valve to the Susquehanna River, unattended for approximately 50 minutes during valve testing. This action, which resulted in the normal ESW system return flow to the river being isolated and return flow being directed to the emergency cooling tower (ECT), was due to inadequate communications between the maintenance and operations staff and a weak procedure regarding positive control of the valve's position.

The valve was closed in accordance with a test procedure which required that thrust data be obtained while the valve was stroked. With the normal ESW system discharge to the Susquehanna river isolated, system flow would have been discharged to the ECT if the ESW system had been called upon to operate in the event of an accident. In this condition, ESW system flow to the emergency diesel generators (EDGs) and the emergency core cooling systems (ECCSs) room coolers would have been reduced because of the addition of approximately 44 feet of static head, in addition to increased dynamic head losses because ESW system flow would be directed through the non-operating ESW system booster pumps. Your analysis of the condition later determined that this reduced flow would have prevented the EDGs from performing their safety-related functions had the design basis accident occurred with river water at the maximum design temperature of 90°F.

This condition occurred because procedures were not in place that required maintenance personnel to remain at the valve throughout the testing so as to immediately open the valve if it were needed. In this case, after maintenance personnel received work start authorization, they closed the valve and subsequently left it unattended and in the closed position for approximately 50 minutes. The valve was not reopened until after a control room ECT alarm and subsequent ECT overflow due to regular service water flowing through the alternate path and to the ECT. Although the valve was immediately reopened at that time, your staff did not recognize the impact of this condition on the ESW system operability. That impact was not identified until the event was reviewed by the NRC resident inspectors on September 7, 1994, at which time the NRC special inspection was initiated and the degradation and related violations were identified. A second cause of this event was that there was an inadequate review of the valve testing procedure performed to ensure that the ESW system would be maintained within its design basis while in the test configuration. As a result, the procedure, which required that MO-498 be closed for a period of time such that test data could be collected, had not considered the effect on system operability with the normal discharge path to the ultimate heat sink isolated.

The NRC recognizes that your subsequent evaluation of the condition revealed that the ESW system would have provided adequate post-accident short term cooling of the EDGs and ECCS, considering the value of actual plant parameters at the time the subject valve was closed. In addition, an ECT overflow condition and/or high EDG temperatures would have possibly alerted operators that the ESW system was improperly aligned and long term cooling could have been restored once the valve was reopened. Nonetheless, the failure to establish appropriate procedural controls to ensure positive control of MO-498, if called upon to function in the event of an accident, and the failure to perform an adequate review of the valve testing procedure in order to maintain the design basis, represent significant regulatory concerns and violations of NRC requirements. These concerns are significant since closure of the valve resulted in a reduction of the ESW system cooling capacity, because of lower than designed system flow rates. Further, the reduction in the ESW system cooling capacity resulted in an unanalyzed degradation of EDG and ECCS system operability. In addition, the unattended closed valve could have substantially complicated a response to an accident or significant transient. Therefore, the violations have been categorized as a single Severity Level III problem in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy).

The NRC is concerned because there were, at minimum, two opportunities for your staff to have prevented this event from occurring. The first opportunity consisted of a reactor operator (RO) expressing concern over shutting MO-498, but was subsequently assured by a Senior Reactor Operator that personnel would be stationed at the valve to immediately return it to an open position if the flow path was needed. The second opportunity occurred when the pre-testing briefing was performed. This briefing, conducted between control room operators and the testing crew, was not performed with the crew that actually tested MO-498; rather, the briefing was mistakenly conducted with another testing crew that was performing valve testing on other valves in another area of the station. Thus, the control room staff was not able to adequately communicate the scope of the

testing, and the importance to safety of the position of MO-498, and the staff failed to exhibit the appropriate sensitivity to the control of work, as evidenced by the wrong crew being briefed. This example of poor communications between operations and maintenance crews contributed directly to the failure to maintain positive control of MO-498 and ultimately resulted in placing the ESW system in its unanalyzed condition.

The NRC recognizes that subsequent to the identification of the violations, corrective actions were taken or planned, to prevent the violations and preclude recurrence, including (1) short-term actions such as review of the event with all maintenance personnel, and review of expectations for equipment manipulation with all operations and maintenance personnel; and (2) long-term actions which included (a) addition of enhanced controls to the related testing procedure; (b) review of other work processes to ensure adequate controls exist; (c) review of expectations with the work planners concerning improved planning and coordination activities; (d) reorganization of the operations services group to improve work planning; and (e) enhancement of procedures covering release of equipment for maintenance to provide clear guidance regarding equipment operability and control requirements.

Notwithstanding those corrective actions, to emphasize the importance of (1) appropriate coordination between operations and maintenance personnel, (2) establishment of appropriate procedural controls during the conduct of maintenance activities, to ensure that safety equipment is appropriately maintained, and (3) operations maintaining control of such evolutions rather than deferring this responsibility to maintenance, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$87,500 for the violations set forth in the enclosed Notice.

The base civil penalty amount for a Severity Level III problem is \$50,000. The escalation and mitigation factors set forth in the enforcement policy were considered, and on balance, 75% escalation of the civil penalty is warranted. Under the factor of identification, 50% escalation is warranted because the problem was identified by the NRC. Because of the self-disclosing nature of the event, your staff identified the mispositioning of the ESW system valve on August 3, 1994; however, you did not recognize the impact of the closed valve on the operability of the ESW system. Your corrective actions were considered comprehensive and 25% mitigation on this factor is warranted; full 50% mitigation is not appropriate because at the time of the enforcement conference, a timetable had not been established for completion of the long term corrective actions. With respect to your past performance, although there have been no related violations in this area in the past two years, your overall enforcement history includes a Severity Level III violation in the area of radiation protection and your SALP ratings in the area of maintenance and engineering were both Category 2. For these reasons, full mitigation on this factor is not warranted; rather, 50% mitigation is considered appropriate. With respect to the "prior opportunity to identify" factor, you did not identify the impact that closing MO-498 had on the ESW system, despite having several prior opportunities to have identified the problem prior to NRC's identification on September 7, 1994. These prior opportunities included the technical review of the testing procedure that required MO-498 to be shut, which subsequently placed the ESW system in an

unanalyzed condition, and the issuance of a corrective action document following the ECT overflow that focused only on the overflow event and failed to probe deeper into the more significant issue of the ESW system being in an unanalyzed condition. Also, the problem could have been identified prior to MO-498 being shut when the RO voiced concerns about the manipulation. The NRC has determined that you clearly had an opportunity for discovering that the ESW system was outside of its design basis, but you did not do so; therefore, 100% escalation of this factor is warranted. The other factors were considered and no further adjustment was deemed appropriate. Therefore, the final adjusted civil penalty is \$87,500.

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 the additional actions you plan to prevent recurrence. To the extent appropriate, you may reference any prior submittal in your response.

In addition, another event occurred at the station in October 1994, involving the failure to properly monitor reactor temperature during restoration from a plant pressure test of the reactor coolant system. This event indicates similar problems with control of plant conditions. Although the consequence to safety of the October event was low, it provides another example of performance deficiencies in shift management's command and control of evolutions, use of procedures, and operator monitoring of changing plant conditions. Therefore, you should formulate corrective actions to address these weaknesses and the deficiencies identified in the enclosed 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 (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,

Thomas T. Martin
Regional Administrator

Docket Nos. 50-277/50-278
License Nos. DPR-44/DPR-56

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encl:

J. Doering, Chairman, Nuclear Review Board
G. Rainey, Vice President, Peach Bottom Atomic Power Station
W. Smith, III, Vice President, Nuclear Station Support
D. Feters, Director, Nuclear Engineering
A. Kirby, III, External Operations - Nuclear, Delmarva Power & Light Co.
G. Edwards, Plant Manager, Peach Bottom Atomic Power Station
A. Wasong, Manager, Experience Assessment
G. Hunger, Jr., Director, Licensing
J. Durham, Sr., Senior Vice President and General Counsel
J. Isabella, Director, Generation Projects Department, Atlantic Electric
B. Gorman, Manager, External Affairs
R. McLean, Power Plant Siting, Nuclear Evaluations
D. Poulsen, Secretary of Harford County Council
R. Ochs, Maryland Safe Energy Coalition
J. Walter, Chief Engineer, Public Service Commission of Maryland
PUBLIC
Nuclear Safety Information Center (NSIC)
K. Abraham, PAO-RI (2)
NRC Resident Inspector
Commonwealth of Pennsylvania
TMI - Alert (TMIA)

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

PECO Energy Company
Peach Bottom Units 2 and 3
Delta, Pennsylvania

Docket Nos. 50-277, 50-278
License Nos. DPR-44, DPR-56
EA 94-197

During an NRC inspection conducted on September 7-14, 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 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 Part 50, Appendix B, Criterion III, requires, in part, that measures shall be established to assure that applicable regulatory requirements and the design basis are correctly translated into procedures and instructions.

Contrary to the above, on August 3, 1994, the licensee conducted a testing activity on the emergency service water (ESW) system that placed the system in a configuration that was not within the design basis described in the Updated Safety Analysis Report. Specifically, ESW system valve MO-498, the system's normal return to the ultimate heat sink (UHS), was shut and left unattended. As a result, the ESW system flow to safety-related components was reduced to the extent that adequate cooling was not available in the event that the design basis accident occurred at the design basis UHS maximum temperature. (01013)

- B. 10 CFR Part 50, Appendix B, Criterion V, requires, in part, that activities affecting quality shall be prescribed by documented instructions and procedures of a type appropriate to the circumstances and shall be accomplished in accordance with those procedures and instructions.

Contrary to the above, on August 3, 1994, the licensee tested ESW System Valve MO-498, an activity affecting quality, in a manner that was not prescribed by documented instructions and procedures of a type appropriate to the circumstances. Valve MO-498, the ESW system normal return to the ultimate heat sink and important to maintaining adequate cooling water flow to safety-related components, was shut and procedures were not in place to require personnel to remain at the valve and immediately open the valve if needed in the event of an accident. As a result of the inadequate procedure, after shutting the valve, maintenance personnel left the valve unattended and in the shut position for approximately 50 minutes. (01023)

This is a Severity Level III problem (Supplement I).
Civil Penalty - \$87,500.

Pursuant to the provisions of 10 CFR 2.201, PECO Energy 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 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 violations 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 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.

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. 2282(c).

Enclosure

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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, Pennsylvania 19406 and a copy to the Senior Resident Inspector, Peach Bottom Station.

Dated at King of Prussia, Pennsylvania
this *21st* day of November 1994

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

October 5, 1994

EA 94-112

Mr. E. James Ferland
Chairman and Chief Executive Officer
Public Service Electric and Gas Company
80 Park Plaza
Newark, New Jersey 07101

Dear Mr. Ferland:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$500,000
(Inspection Reports Nos. 50-272/94-80; 50-311/94-80; and
50-272/94-13; 50-311/94-13)

This letter refers to the NRC Augmented Inspection Team (AIT) inspection conducted on April 8-26, as well as a follow-up inspection conducted on May 1 - June 25, 1994, at the Salem Nuclear Generating Station, Hancocks Bridge, New Jersey. The inspection reports were sent to you on June 24 and July 1, 1994, respectively. The AIT inspection was conducted to review the circumstances associated with an event that occurred at Unit 1 on April 7, 1994, involving an automatic reactor shutdown and two automatic actuations of the safety injection system. The reactor shutdown was complicated due to problems with spurious steam flow signals; failure of the atmospheric dump valves to function properly, which caused safety relief valves to open; the pressurizer going solid due to the safety injections; the Pressurizer Power Operated Relief Valves opening numerous times to relieve system pressure; and the Pressurizer Relief Tank rupture disc rupturing due to being overpressurized.

Based on staff review of the AIT report, as well as the follow-up inspection, violations of NRC requirements were identified. The apparent violations were provided to you in a letter, dated July 6, 1994. On July 28, 1994, an open enforcement conference was conducted with members of your staff to discuss the violations, their causes, and your corrective actions.

The event occurred on April 7, 1994, when marsh grass caused clogging of the circulating water systems travelling screens at the intake structure, which led to a trip of the circulating water pumps. Although the control room operating staff initiated a power reduction (at a rate of between 1% and 8% per minute), the Senior Nuclear Shift Supervisor (SNSS) lost command and control focus when he personally performed the actions to bypass a vacuum permissive interlock to restart a circulating water pump that had tripped. That activity was not authorized by procedure and required him to leave the control room during a critical stage of the transient. Furthermore, while the SNSS was involved with bypassing the pump interlock, the Nuclear Shift Supervisor (NSS), who was in charge at the time, also abandoned his command and control function for a short period when he became directly involved in the withdrawal of control rods for the purpose of recovering reactor coolant

temperature from an overcooling condition. Subsequently, the reactor tripped automatically when power was increased beyond 25% without clearing a control setpoint.

The reactor and turbine trip resulted in the sudden closure of the turbine stop valves. This caused a pressure wave in the main steam piping that, coincident with the low reactor coolant temperature at the time, caused an automatic actuation of the safety injection system and the consequent filling of the pressurizer steam space. Although the reactor coolant temperature and steam generator pressure subsequently increased (due to core decay heat) to a point where the atmospheric relief valves should have opened, the valves did not function. As a result, a steam generator code safety valve opened, resulting in a rapid decrease in reactor temperature and reactor pressure, which initiated another safety injection. This safety injection, with an already solid pressurizer, required the pressurizer power operated relief valves (PORVs) to cycle numerous times, and led to the eventual rupture of the pressurizer relief tank's rupture discs. These incidents all provided complications to the transient that could and should have been avoided.

The related violations and problems are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice). The four most significant violations or problems are described in Section I of the Notice and involve the failure to identify and correct significant conditions adverse to quality at the facility related to spurious steam flow signals and the atmospheric relief valves, both of which led to unnecessary safety injections during the transient; the failure to identify and correct significant conditions adverse to quality at the facility related to providing adequate training, guidance, and procedures for the operators to cope with the event; and the failure by the SNSS and NSS to exercise appropriate command and control of the operations staff and the reactor during the transient.

With respect to items I.A and I.B in the attached Notice, your staff was aware of degraded or impaired equipment performance and tolerated or "worked around" the conditions. Spurious high steam flow signals were known to have occurred during previous reactor trips at the facility. However, the cause of the condition was not identified and appropriately addressed. Rather, prior assessments focused on the cause being related to a change in the high steam flow setpoint and the expected response of the related instrumentation. As a result, the actual cause (a pressure wave actuating the high steam flow instruments as a result of a turbine trip) was not identified and corrected. With respect to the second problem, your staff was also aware of the less than optimum performance of the atmospheric dump valve controls as a result of implementing a design modification in 1977. Consequently, the automatic functioning of the valves in response to actual pressure conditions was impaired. However, notwithstanding that the FSAR provided for the automatic actuation of these valves, this condition was not corrected, but rather tolerated by relying on operator actions to assure the proper operation of the valves. These conditions provided an additional challenge to the operators during the April 7, 1994, event.

With respect to item I.C in the Notice, the SNSS decided to personally override a circulator pump protective interlock (vacuum permissive) so as to restart a pump that had tripped, and he left the control room to complete this activity. In doing so, the SNSS failed to maintain the command function at a critical time during the plant transient. During his absence, operator action resulted in reactor coolant temperature decreasing below the minimum temperature for criticality, which eventually resulted in, (1) satisfying part of the protection logic for an automatic safety injection, and (2) operating errors during subsequent recovery actions that caused the reactor trip. In addition, while the SNSS was absent from the control room, the NSS, designated as responsible for the control room command function, assumed the duties of a reactor operator for a short period by performing control rod movements. As a result, for the period of time the NSS was manipulating the controls, no individual was responsible for the control room command and control function.

With respect to item I.D in the Notice, four violations were identified. Degraded conditions or workarounds were accepted rather than fully addressed. Procedures and training were not adequate to assist the operations staff in coping with the transient caused by the grass intrusion, including the maximum rates for reducing power during transient conditions, recovery and control of the safety injection system, and recovery from a solid pressurizer condition. In addition, the SNSS violated a procedure for maintaining configuration control for the circulating water pump when he momentarily bypassed an interlock for condenser water box vacuum in an attempt to start the pump. This procedural concern is significant in light of management's response to prior events. Similar grass intrusion events had occurred prior to April 7, 1994. In response to those prior occurrences, station management provided specific procedures and instructions for dealing with the effects of the events on operation of screenhouse equipment. However, station management did not provide adequate training or specific guidance and procedures for activities performed by the control room staff, and this failure was significant since the potential safety effect of the April 7, 1994, transient was aggravated by control room staff errors. Also, the plant's nuclear steam system supply vendor (Westinghouse) had reported the potential for inadvertent safety injection system actuations filling the pressurizer to solid conditions. However, station management had not taken actions regarding the Westinghouse information.

These four problems demonstrate that management provided inadequate direction to the staff at the facility, which contributed to the operator errors, non-conservative operational decision-making by line management, and deficiencies in command and control. It also raises serious questions regarding the manner in which management's expectations are established and communicated to the Salem staff regarding their performance at the station. Furthermore, these deficiencies are particularly disturbing since this was the fourth significant event at the Salem facility since November 1991, when an overspeed condition caused catastrophic damage to your turbine at Unit 2. The recent history also raises serious questions regarding the adequacy of management's commitment to conducting appropriate root cause analysis of the problems at the Salem facility, as well as improving performance and precluding such events in the

future. Given the significant programmatic deficiencies exemplified by these violations, each of the problems is individually classified at Severity Level III in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, (Enforcement Policy).

The NRC recognizes that subsequent to the identification of these problems, actions were taken to correct the problems and prevent recurrence. These actions, which were described at the enforcement conference, included, but were not limited to, (1) convening of a significant event response team to review the event and its ramifications; (2) verbal reinforcement that all staff are expected to identify and participate in the correction of problems at the facility; (3) additional training to individuals whose performance was less than expected, including simulator training sessions for all the operating crews; (4) issuance of an Information Directive to all shift personnel to reinforce and clarify management's expectations regarding command, control, and communications; (5) revision of certain procedures; and (6) development of long-term program improvement actions as part of your Comprehensive Performance Assessment Team (CPAT).

Although the NRC found each of your immediate corrective actions to be acceptable, the NRC is unwilling to predict or assume success for your long-term actions because historically, the implementation of such actions for past problems has proven to be ineffective. While your actions are aimed at proximate causes, the NRC is not yet confident that lasting actions have been established that will prevent recurrence. Specifically, although senior management generally has established appropriate expectations for staff level performance, those expectations were neither clearly communicated to the staff, nor effectively reinforced by middle management and first line supervision. The NRC is particularly concerned because communications between senior station management and the staff have been deficient for some time, and the deficiencies have contributed to a number of prior events.

Simply stated, it appears that you have tolerated an atmosphere that accepts degraded conditions and resultant workarounds such as those that contributed to the event, rather than establish an atmosphere of a quality licensee environment. Therefore, to emphasize the importance of aggressive management of the Salem facilities to ensure that (1) management expectations are established, effectively communicated, and followed by your staff, (2) problems are promptly identified and corrected, and (3) operations supervision, particularly the Senior Reactor Operators, maintain appropriate command and control of the reactor at all times, particularly during transient conditions, I have issued the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the cumulative amount of \$500,000 for the violations set forth in Section I of the Notice.

The base civil penalty amount for each Severity Level III violation or problem is \$50,000. The adjustment factors in the Enforcement Policy were considered and no escalation or mitigation for those factors was considered appropriate. The NRC considers items I.A, I.B, and I.D to involve multiple or continuing violations that existed for more than one day. Enforcement discretion was applied to escalate the civil penalty for items I.A, I.B, and I.D an

additional \$100,000 each, per Section VII.A of the Enforcement Policy, to further emphasize the importance that the NRC places on the need for each licensee to identify conditions adverse to quality, determine the root causes, and promptly effect lasting, comprehensive corrective actions rather than tolerating degraded conditions and workarounds.

You are required to respond to this letter and the enclosed Notice and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In your response, you should also describe the corrective actions that you have taken or planned to ensure management expectations are clearly communicated to, understood by, and consistently carried out by, your staff; how you will measure the effectiveness of those corrective actions; and how you will reinforce your expectations. Your response should also address in particular what actions you will be taking to promptly terminate this apparent practice of tolerating known degraded conditions such as those that contributed to this event. We expect an aggressive and prompt response to this matter as neither you nor the NRC can accept (1) this performance in the future, and (2) the large number of equipment related events that have recently occurred at Salem. 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 and its enclosures 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.

Sincerely,

James M. Taylor
Executive Director
for Operations

Docket Nos. 50-272; 50-311
License Nos. DPR-70; DPR-75
EA 94-112

Enclosure:
Notice of Violation and Proposed Imposition of Civil Penalties

Public Service Electric
and Gas Company

- 6 -

cc w/encls:

L. Eliason, President and Chief Nuclear Officer
J. Hagan, Vice President - Operations/General Manager - Salem Operations
S. LaBruna, Vice President - Engineering and Plant Betterment
C. Schaefer, External Operations - Nuclear, Delmarva Power & Light Company
R. Hovey, General Manager - Hope Creek Operations
F. Thomson, Manager - Licensing and Regulation
J. Robb, Director, Joint Owner Affairs
A. Tapert, Program Administrator
R. Fryling, Jr., Esquire
M. Wetterhahn, Esquire
P. Curham, Manager, Joint Generation Department, Atlantic Electric Company
Consumer Advocate, Office of Consumer Advocate
W. Conklin, Public Safety Consultant, Lower Alloways Creek Township
K. Abraham, PAO-RI (2)
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New Jersey
State of Delaware
State of Maryland

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

Public Service Electric and Gas Company
Salem Nuclear Generating Station
Units 1 & 2

Docket Nos. 50-272; 50-311
License Nos. DPR-70; DPR-75
EA 94-112

As a result of NRC review of the results of an Augmented Inspection Team inspection conducted on April 8-26, 1994, as well as a follow-up inspection conducted on May 1-June 25, 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 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. Violations Assessed Civil Penalties

- A. 10 CFR Part 50, Appendix B, Criterion XVI, Corrective Action, requires, in part, that licensees promptly identify significant conditions adverse to quality, determine their causes, and take corrective action to preclude recurrence.

Contrary to the above, prior to April 7, 1994, the licensee did not promptly identify and correct the cause of spurious high steam flow signals that occurred during reactor/turbine trips on June 10, 1989, July 11, 1993, and February 10, 1994, a significant condition adverse to quality. As a result, this condition recurred on April 7, 1994, during a transient, and led to an unnecessary Safety Injection system actuation in response to a reactor trip.

This is a Severity Level III problem (Supplement I). (01013)
Civil Penalty - \$150,000

- B. Licensees are required by 10 CFR 50.71(e) to assure that the updated Final Safety Analysis Report (FSAR) accurately describes the design, construction, and operation of the licensed facility and the operations. Specifically, licensees are required (in part) to revise the updated FSAR "to include the effects of... all changes made in the facility or procedures as described in the FSAR."

Licensees are required to maintain and operate the facility as described in the FSAR unless, per 10 CFR 50.59, changes are made after completing a safety evaluation which provided the bases for the determination that the changes did not involve an unreviewed safety question.

The Salem Generating Station Updated FSAR, in section 10.4.4.1, states that "[s]hould the condenser not be available as a heat sink, the steam generator safety valves and power operated relief

valves (PORVs) will open to dump steam to the atmosphere." This automatic opening of the steam generator PORVs is credited in section 15.2.9.1.2 in the mitigation of a loss of offsite power and a turbine trip.

Contrary to the above, the licensee had modified the controller for the steam generator PORVs such that, prior to April 7, 1994, the PORVs would not open to dump steam to the atmosphere following the loss of the condenser heat sink without manual operator action. The changes were made and the plant so operated without the completion of a safety evaluation and without revising the Updated FSAR. The inability of the steam generator PORVs to open automatically, as described in the FSAR, was recognized and tolerated by the licensee since 1977 and contributed to the severity of the April 7, 1994, plant transients, including an unnecessary automatic actuation of the Safety Injection system.

This is a Severity Level III problem (Supplement I). (02013)
Civil Penalty - \$150,000

- C. Technical Specification 6.1.2 requires that the Senior Nuclear Shift Supervisor (SNSS) or, during his absence from the control room, a designated individual, shall be responsible for the control room command function.

Technical Specification 6.8 requires that written procedures be established, implemented and maintained covering the activities referenced in Appendix A of Regulatory Guide 1.33, which includes administrative procedures.

PSE&G Administrative Procedure NC.NA-AP.ZZ-002(Q), Attachment 32, "Shift Management Responsibility for Station Operation," (a procedure written to satisfy the requirements in Appendix A of Regulatory Guide 1.33) requires, in part, that the SNSS shall remain free to survey and analyze all operating parameters, noting that intense involvement in any particular detail may run the risk of losing control and perspective of the overall operation.

Contrary to the above, on April 7, 1994, during a grass intrusion event at the circulating water system intake structure, shift management personnel did not remain free to survey and analyze all operating parameters, and for a short period lost control and perspective of the overall operation, in that:

1. The SNSS involved himself in a particular detail when he left the control room during the loss of circulating water transient to override a circulating water pump protective

interlock so as to restart a circulating water pump, and in doing this activity, failed to maintain his control room command function during a portion of the plant transient; and

2. While the SNSS was absent from the control room, the nuclear shift supervisor (NSS), designated as responsible for the control room command function, assumed the duties of a reactor operator by performing control rod movements for a short period. As a result, for the period of time the NSS was manipulating the controls, no individual was responsible for the control room command function.

This is a Severity Level III problem (Supplement I). (03013)
Civil Penalty - \$50,000

- D. 10 CFR Part 50, Appendix B, Criterion XVI, Corrective Action, requires, in part, that licensees promptly identify significant conditions adverse to quality, determine their causes, and take corrective action to preclude recurrence.

Contrary to the above, on April 7, 1994, inadequate training, guidance and procedures were provided to the operators to cope with plant transients resulting from grass intrusion events, events which had previously occurred frequently at the Salem facility and which had caused safety system challenges and reactor trips, significant conditions adverse to quality, as evidenced by the following violations:

1. Prior to the reactor trip on April 7, 1994, the SNSS determined that an important action to mitigate the ongoing plant transients due to the grass intrusion event was to bypass an interlock to allow the quick restart of a station circulating water pump, as had been done on previous occasions. Existing procedures did not authorize this action. The SNSS did not use station procedure, NC.NA-AP.ZZ-0013(Q), "Control of Temporary Modifications," when bypassing the interlock, in that he changed a switch position to allow the pump to restart, without satisfying the requirements in Section 3.9 of the procedure. Specifically, the SNSS did not approve the bypass of the circulating water pump interlock as a temporary modification, including initiation of attendant logs and reviews. Further, the SNSS did not discuss the bypass of the interlock with a System Engineer as required by Section 4.1 of the procedure, nor was a Temporary Modification Package prepared for the bypassed interlock, as required by Sections 5.1.7 and 5.2 of the procedure. Finally, and because the bypass of the interlock was not identified and treated by the

SNSS as a temporary modification, appropriate reviews of the modification were not conducted as required by Section 5.4 of the procedure.

2. While experiencing the loss of condenser vacuum, a rapid power reduction was initiated from approximately 75 percent power, using procedure S1.OP-10.ZZ-0004(Q), "Power Operation." The procedure was not adequate for the circumstances in that it did not provide specific guidance to support the rate of power reduction that was used during the April 7, 1994 transient, and it did not state the management expectation as to when operators should cease the effort to maintain plant operations and instead stabilize plant conditions by either a turbine or reactor trip. Additionally, operator training was not adequate to compensate for the lack of specificity in the procedure. As a result, operators exceeded shutdown rates included in their training, and allowed the reactor temperature to drop below the minimum temperature required for critical operations.
3. During the initial actuation of the safety injection system on April 7, 1994, an emergency core cooling system partial train actuation occurred, namely, the "A" train of the Solid State Protection System actuated, and operators implemented emergency operating procedure, 1-EOP-TRIP-1. Neither the procedure nor the operator training provided was adequate for the circumstances in that guidance was not sufficient to allow operators to recover from the resulting safety injection logic disagreement and to control the safety injection system in a timely manner. The plant's nuclear steam system supply vendor (Westinghouse) had previously communicated to the licensee the potential for inadvertent safety injection system actuations filling the pressurizer to solid conditions. However, station management had not taken actions regarding the Westinghouse information. As a result, the plant pressurizer filled with water from the safety injection, significantly complicating the event because it challenged the reactor coolant pressure boundary.
4. During the recovery from the solid pressurizer condition, neither plant procedures nor operator training was adequate in that operators were unable to utilize any procedure relating to existing plant conditions. Although Emergency Operating Procedure, EOP-CFST-1, "Coolant Inventory Status Tree", was available, it was not used because the operators

believed that the functional recovery procedure for high pressurizer level, FRCI-1, could not be used because of a requirement to secure all reactor coolant pumps to ensure that the Reactor Vessel Level Indication System indicated greater than 100 percent full.

This is a Severity Level III problem (Supplement I). (04013)
Civil Penalty - \$150,000

II. Violations not Assessed a Civil Penalty

- A. 10 CFR 50.57 requires, in part, that emergency plans and procedures for event classification and notification of offsite authorities be implemented. Salem Emergency Plan and Event Classification Guide, Attachment 8, NRC Data Sheet, requires that specified information regarding the event description be completed, approved, and provided to the designated communicator for transmission (to the NRC) within 60 minutes. The specified information includes systems affected, actuations and their initiating signals, causes, effect of event on plant, and actions taken or planned. It also requires that anything unusual or not understood be noted.

Contrary to the above, on April 7, 1994, although the NRC was informed of an unusual event at the facility involving a reactor trip and safety injection, specified information was not communicated to the NRC within 60 minutes, as evidenced by the following examples of information that were not provided:

1. The apparent logic mismatch of the protection system and resultant unexpected (or lack of) operation of the (ECCS) flow path valves and the unexpected condition of the main steam and feedwater isolation systems;
2. The cause of the reactor trip;
3. The effect of the event on the plant (namely, the consequent solid RCS condition); and,
4. The operators' plans to recover from the solid RCS condition.

This is a Severity Level IV violation (Supplement VIII). (05014)

- B. 10 CFR Part 50, Appendix B, Criterion VIII, Identification and Control of Materials, Parts, and Components, requires in part, that measures be established for the identification and control of parts and components. These measures must assure that identification of the item is maintained throughout installation and prevents the use of incorrect parts.

Contrary to the above, prior to April 7, 1994, measures were not established for the configuration control of certain parts and components, as evidenced by the following examples:

1. During the 1993 Unit 2 outage, power operated relief valve (PORV) internals made of 17-4PH stainless steel (original design material) were installed in valves 2PR1 and 2PR2, rather than internals made of 420 stainless steel as recommended by the vendor, and approved by the licensee as design change replacement material.
2. The post-trip investigation for the April 7, 1994 event, identified that the installed summator module for the high steam flow setpoint did not have the proper identification. Specifically, a regular module was installed instead of a specifically-modified variant.

This is a Severity Level IV violation (Supplement I). (06014)

Pursuant to the provisions of 10 CFR 2.201, Public Service Electric and Gas 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 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. 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 cumulative amount of the civil penalties proposed above, 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 V.B of 10 CFR Part 2, Appendix C (1992), 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. 2282(c).

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 I, 475 Allendale Road, King of Prussia, Pennsylvania 19406 and a copy to the Senior Resident Inspector, Salem Generating Station.

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

C. REACTOR 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

October 11, 1994

EA 94-135

Burns International Security Services, Inc.
Mr. L. DelRosso, President
Utility Business Unit
Suite 120W
387 Shuman Boulevard
Naperville, Illinois 60563

SUBJECT: NOTICE OF VIOLATION
OFFICE OF INVESTIGATIONS CASE NO. 2-92-044R
(U.S. DEPARTMENT OF LABOR CASE NO. 93-ERA-37)

Dear Mr. DelRosso:

This letter refers to the results of an investigation conducted by the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) during the period June 15, 1993 through June 6, 1994. The investigation included a review of an alleged violation of security requirements related to inattentiveness by a security guard, an alleged coverup of the violation by your management at the Crystal River Nuclear Plant and a complaint of employee discrimination filed by Mr. Scott T. Mayrose, a Burns International Security Services, Inc. (Burns) security guard assigned to the Crystal River Nuclear Plant. The OI investigation did not substantiate the occurrence of a security violation or that your management concealed the incident. The OI investigation did conclude that your management staff wrongfully discharged Mr. Mayrose after he notified them of an alleged violation of NRC requirements. The OI report further stated that your staff exhibited careless disregard for the regulations applicable to employee protection in the wrongful discharge of Mr. Mayrose.

The Department of Labor (DOL) Wage and Hour Division in Tampa, Florida also received a complaint from Mr. Mayrose in April 1993. In response to that complaint, the Wage and Hour Division secured an employee/employer conciliation. Although the case was appealed after conciliation (DOL Case No. 93-ERA-37), the settlement was subsequently finalized before a final decision on the merits was made by the DOL Administrative Law Judge. This matter, including its cause and corrective actions to preclude recurrence, were discussed with members of your staff and representatives of Florida Power Corporation (FPC) during an enforcement conference held in the Region II office on August 16, 1994.

As a result of the OI investigation, the NRC has concluded that a violation of NRC requirements occurred in this case; specifically, a violation of 10 CFR 50.7, which prohibits discrimination against an employee for engaging in activities protected by Section 211 of the Energy Reorganization Act (ERA). In this case, Mr. Mayrose filed a complaint with FPC's Nuclear Safety Concerns Program, the NRC and DOL alleging that he was terminated from his job as a security guard on November 5, 1992 because he had raised safety concerns related to a June 1992 incident in which a security guard who was monitoring

the entrance into a vital area was rumored to have been found asleep on duty. The NRC finds that a violation of 10 CFR 50.7 occurred when Mr. Mayrose was subsequently terminated as a result of raising those concerns. Under 10 CFR 50.7, discrimination by a contractor of a Commission licensee against an employee for engaging in protected activities is prohibited. The activities which are protected include, but are not limited to, reporting of safety concerns by an employee to his employer. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, the violation has been categorized as a Severity Level II violation because the discriminatory action taken against Mr. Mayrose was taken by a Burns manager who was above a first line supervisor.

During the enforcement conference, your staff denied the violation. They maintained that Mr. Mayrose was terminated for misconduct in accordance with Burns' Disciplinary Policy and that Mr. Mayrose had made false and malicious statements against other employees and supervisors and had withheld facts related to the alleged violation involving the inattentive guard. At the enforcement conference, your staff maintained that Section 211 of the ERA does not apply in cases of misconduct. They indicated that the decision to terminate Mr. Mayrose was heavily influenced by the statements of two FPC employees who allegedly were aware of the June 1992 incident. A third FPC employee interviewed regarding the incident was deemed not as credible by the licensee security manager and Burns management. Testimony elicited from these three witnesses during the OI investigation conflicted in some significant respects with statements that were attributed to them during their previous interviews by licensee security management. That subsequent information plus additional testimony obtained from other Burns security guards during the OI investigation substantiated Mr. Mayrose's contentions that there were prevalent rumors to the effect that a guard had been sleeping on post.

In addition, although the Burns Project Manager at the Crystal River Nuclear Plant discussed the fact that the action was a potential violation of the ERA with your corporate Labor Relations Manager, we conclude that his judgment was incorrect that Mr. Mayrose's rights as a protected employee were negated by the assertion that he had engaged in misconduct. There is no evidence that Mr. Mayrose made the statements regarded by Burns to be false and malicious to anyone other than in his written report to the Burns Project Manager who had requested the security staff to provide any information related to the event of the security guard allegedly found asleep. Your Project Manager was fully aware of Mr. Mayrose's safety concern and stated that he had no other reason for terminating Mr. Mayrose; yet he chose to exercise the maximum penalty allowed under the disciplinary policy. The investigation that your staff conducted, as supplemented by the interviews conducted by FPC managers, was not sufficiently comprehensive to refute the merits of Mr. Mayrose's statements and conclude that disciplinary action was appropriate. Therefore, it is concluded that the disciplinary action was taken in retaliation for Mr. Mayrose raising safety concerns. We conclude that the facts support the conclusion that your staff exhibited careless disregard for the regulations applicable to employee protection in the wrongful discharge of Mr. Mayrose.

The NRC is concerned that, although Burns managers involved in this incident were aware of the policies in place to protect an employee's right to voice safety concerns, they did not properly implement those policies. The NRC is also concerned about the potential chilling effect the termination of Mr. Mayrose may have had on other Burns employees. The chilling effect may have been mitigated by the fact that Mr. Mayrose was reinstated; however, this action was not taken without the intervention of Florida Power Corporation. You should make every effort to ensure that all employees are provided with an environment in which they may freely identify safety concerns without fear of retaliation or discrimination.

Therefore, I have been authorized, after consultation with the Commission, to issue the enclosed Notice of Violation (Notice) categorized at a Severity Level II to emphasize the importance of ensuring that employees who raise real or perceived safety concerns are not subject to discrimination for raising safety concerns and that every effort is made to provide an environment in which all employees may freely identify safety concerns without fear of retaliation or discrimination. During the enforcement conference, your staff described those actions taken by Burns at Crystal River Nuclear Plant as a result of this violation. Those actions included: (1) reinstatement and compensation of Mr. Mayrose; (2) a complete review of your policies and procedures for any conflict with requirements of the ERA and 10 CFR 50.7; and, (3) training for Burns managers in employee rights and management duties under these requirements including provisions for documented retraining. In addition, your management supported the decision to provide FPC training to the Burns security force to encourage openness among all employees.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC notes that you no longer have a contract with FPC at Crystal River; however, given your status as a major contractor to Commission licensees, it is important that your supervisors and managers appreciate that employees should be free to raise concerns and that discrimination will not be tolerated. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence of the discrimination that occurred in this case. In particular you should address the actions, if any, taken or planned to assure that your managers have received adequate training in implementation of the requirements of the ERA and 10 CFR 50.7. In addition, your response should describe the actions taken or planned to assure that the subject employment action did not have a chilling effect in discouraging other Burns employees from raising perceived safety concerns. 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 and its enclosure 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.

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

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No. 9999
EA 94-135

Enclosure: Notice of Violation

cc w/encl:

Gary L. Boldt, Vice President
Nuclear Production (SA2C)
Florida Power Corporation
15760 West Power Line Street
Crystal River, FL 34428-6708

B. J. Hickie, Director
Nuclear Plant Operations (NA2C)
Florida Power Corporation
15760 West Power Line Street
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R. C. Widell, Director (NA2I)
Nuclear Operations Site Support
Florida Power Corporation
15760 West Power Line Street
Crystal River, FL 34428-6708

Gerald A. Williams
Corporate Counsel
Florida Power Corporation
MAC - A5A P. O. Box 14042
St. Petersburg, FL 33733

Burns International Security
Services, Inc.

- 5 -

cc w/encl cont'd:
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, FL 32304

Joe Myers, Director
Division of Emergency Preparedness
Department of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100

Bill Passetti
Office of Radiation Control
Department of Health and
Rehabilitative Services
1317 Winewood Boulevard
Tallahassee, FL 32399-0700

Chairman
Board of County Commissioners
Citrus County
110 N. Apopka Avenue
Inverness, FL 36250

Robert B. Borsum
B&W Nuclear Technologies
1700 Rockville Pike, Suite 525
Rockville, MD 20852-1631

NOTICE OF VIOLATION

Burns International Security
Services, Inc.
Naperville, Illinois

Docket No. 9999
EA 94-135

Based on the results of an investigation conducted by the NRC's Office of Investigations (OI) during the period June 15, 1993 through June 6, 1994 at the Crystal River facility, a violation of NRC regulations 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 50.7 prohibits discrimination by a contractor of a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, the reporting of alleged violations of requirements to an employer.

Contrary to the above, on November 5, 1992, Burns International Security Services, Inc. (Burns), a contractor of the Florida Power Corporation, discriminated against Scott T. Mayrose, an employee of Burns, in that Mr. Mayrose was discharged from his position as a security guard at the Crystal River Nuclear Plant for providing information concerning an alleged violation of regulatory requirements to his employer. (01012)

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

Pursuant to the provisions of 10 CFR 2.201, Burns International Security Services, Inc. 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 II, and a copy to the NRC Resident Inspector at the Crystal River Nuclear Plant, 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: (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 further 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 ~~11th~~ day of October 1994

Enclosure

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

November 17, 1994

EA 94-204

Carolina Power and Light Company
ATTN: Mr. W. R. Robinson
Vice President
Shearon Harris Nuclear Power Plant
P. O. Box 165 Mail Code: Zone 1
New Hill, NC 27562-0165

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 50-400/94-21)

Dear Mr. Robinson:

This refers to the inspection conducted by J. Tedrow of this office on September 3 - 28, 1994. The inspection included (1) a review of a longstanding deficiency which resulted in the failure of the emergency service water (ESW) system to meet single failure criteria, and (2) inaccurate information provided to the NRC in response to Generic Letter 89-13. The ESW system deficiency was reported in Licensee Event Report 400/94-003 in accordance with 10 CFR 50.73(a)(2)(ii). As a result of the NRC inspection, violations of NRC regulatory requirements were identified and the report documenting the NRC inspection was sent to you by letter dated October 7, 1994. An enforcement conference was conducted in the NRC Region II office on October 21, 1994, to discuss the violations, their cause, and your corrective actions to preclude recurrence. This enforcement conference was open for public observation in accordance with the Commission's trial program for conducting open enforcement conferences as discussed in the Federal Register, 57 FR 30762, July 10, 1992, and 59 FR 36796, July 19, 1994. A summary of this conference was sent to you by letter dated October 28, 1994.

Violation A, described in the enclosed Notice of Violation (Notice), involves inadequate design control for the ESW system in that a single failure in the system could result in the loss of ESW train independence. Specifically, in the event a safety injection signal was initiated concurrently with a loss of offsite power, the failure of the train "A" auxiliary reservoir return valve, 1SW-270, to open, could cause a previously unanalyzed reverse flow path through the "A" train emergency diesel generator jacket water heat exchanger. The resulting backflow of high temperature water through the charging safety injection pump coolers could damage all three pumps. Following your initial discovery of the reverse flow problem, you initiated action in which the opposite train ESW isolation valves on the charging pumps' oil cooler outlets were closed. This action was subsequently determined to be inappropriate and would have resulted in an increase in the rate of heatup of the ESW cooling water if the event occurred. In addition, you found that the integrity of the ESW piping in the charging safety injection pump rooms would be challenged by expansion from temperatures exceeding the design and could not be assured unless operator action was taken promptly. This vulnerability existed from initial power operations in January 1987, until July 18, 1994.

10 CFR 50, Appendix B, Criterion III requires that measures be established to assure that applicable regulatory requirements are correctly translated into system specifications. FSAR section 9.2.1, Service Water System, states that the service water system is designed to provide a heat sink for essential loads assuming a single active failure in conjunction with a loss of offsite power. Essential loads referenced in Table 9.2.1-1 of the FSAR included the charging pump oil coolers. In addition, Technical Specification 3.7.4 requires two independent trains of ESW. With regard to Violation A, the NRC is concerned that you failed to establish adequate design control measures to identify that a single failure, i.e., the failure of valve ISW-270 to open, could result in an ESW system train interaction that affected the capability to cool the charging safety injection pumps. Generic Letter 89-13, Service Water System Problems Affecting Safety-Related Equipment, recommended that specific reviews of service water system single failure issues be undertaken. Your engineering review process conducted in response to the generic letter was not well defined; accountability for the overall service water system program review was not established; and, no records of final management review and approval of the single failure reviews were found. These weaknesses indicate that your program was neither indepth nor well controlled.

Although the NRC agrees that the probability of occurrence of an event of this type is low, the safety consequences are high in that all three charging pumps and the emergency diesel generator jacket water cooler on the A train could be damaged. Based on this and the fact that specific reviews of service water system single failure issues were recommended by Generic Letter 89-13 because of previous industry issues in this area, your failure to identify this deficiency is a significant concern. Therefore, this violation has been categorized at Severity Level III.

The NRC recognizes that specific corrective actions were taken in response to the violation as discussed during the enforcement conference. Those actions included (1) changing the valve lineup of the ESW system to separate the trains; (2) updating the single failure review of the ESW system; and, (3) performing a review of cross connections in other decay heat removal systems. You also indicated that you plan to conduct a service water system operational performance inspection in late 1994 and will conduct single failure training for appropriate nuclear engineering personnel.

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. Considering your identification of the violation, prompt and extensive corrective actions taken following that identification, and good past performance balanced against the facts that you failed to identify this violation during a prior opportunity in your Generic Letter 89-13 review of the ESW system and the violation had existed for an extensive period of time, the base civil penalty for the violation has been fully mitigated.

Violation B described in the enclosed Notice involved your failure to provide complete and accurate information in a letter to the NRC responding to Generic Letter 89-13 and dated June 17, 1991. Your initial activities, testing and

continuing program were documented in a response to Generic Letter 89-13 dated January 26, 1990. The June 17, 1991 letter stated that, as of May 20, 1991, the date of startup from the 1991 refueling outage, "the initial activities, testing and establishment of the continuing program to which CP&L committed" were completed. In fact, all actions were not completed. The NRC identified an example where single failure reviews were not completed and documented prior to startup from the 1991 refueling outage. The violation was caused by a lack of attention to detail in confirming that commitments to the NRC were completed because of your poor engineering review process, failure to control the service water system program review, and inadequate records of completion of the Generic Letter 89-13 action items. Additionally, during the enforcement conference you indicated that your staff had identified three other discrepancies in implementation of the generic letter commitments. These examples included deferring the test of the "B" charging safety injection pump oil coolers beyond the committed date; establishing a retesting frequency that did not meet the generic letter; and failing to conduct reviews of the maintenance practices, operations and emergency procedures, and training for the component cooling water system or the essential chill water system. These additional three examples are not being cited with the NRC identified violation because you identified these violations and took prompt and appropriate corrective actions.

The NRC requires that information provided by licensees be complete and accurate in all material respects. Although the specific examples of inaccurate information were not of substantial safety significance, this matter is of regulatory concern because your staff did not make an adequate effort to ensure that its statements and representations to the NRC were complete and accurate in all material respects. For these reasons, the NRC is issuing a Severity Level IV violation in this case.

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 and its enclosure will be placed in the NRC Public Document Room (PDR). 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 PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that 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. Ebnetter
Regional Administrator

Docket No. 50-261
License No. DPR-23
EA 94-204

Enclosure: Notice of Violation

cc w/encl:
H. W. Habermeyer, Jr.
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Nuclear Services Department
Carolina Power & Light Company
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Raleigh, NC 27602

J. W. Donahue
Plant Manager - Harris Plant
Carolina Power & Light Company
Shearon Harris Nuclear Power Plant
P. O. Box 165, MC: Zone 1
New Hill, NC 27562-0165

cc w/encl cont'd: (See next page)

cc w/encl cont'd:
David McCarthy, Manager
Regulatory Affairs
Harris Nuclear Project
P. O. Box 165
New Hill, NC 27562

H. Ray Starling
Manager - Legal Department
Carolina Power and Light Co.
P. O. Box 1551
Raleigh, NC 27602

Dayne H. Brown, Director
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Karen E. Long
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Admiral Kinnaird R. McKee
214 South Morris Street
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Robert D. Martin
3382 Sean Way
Lawrenceville, GA 30244

The Honorable Hugh Wells
Chairman of the North Carolina
Utilities Commission
P. O. Box 29510
Raleigh, NC 27626-0510

Robert P. Gruber
Executive Director
Public Staff NCUC
P. O. Box 29520
Raleigh, NC 27626

NOTICE OF VIOLATION

Carolina Power and Light Company
Shearon Harris Nuclear Plant
Unit 1

Docket No. 50-400
License No. NPF-63
EA 94-204

During the Nuclear Regulatory Commission (NRC) inspection conducted from September 3 through 28, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy)," 10 CFR Part 2, Appendix C, the violations are listed below:

- A. 10 CFR 50, Appendix B, Criterion III, requires that measures be established to assure that applicable regulatory requirements and the design basis are correctly translated into specifications, drawings, procedures, and instructions.

FSAR section 9.2.1, Service Water System states that the service water system is designed to provide a heat sink for essential loads assuming a single active failure in conjunction with a loss of offsite power. Essential loads referenced in Table 9.2.1-1 of the FSAR included the charging pump oil coolers.

Technical Specification 3.7.4 states that at least two independent emergency service water loops shall be operable.

Contrary to the above, between plant startup in January 1987 and July 18, 1994, measures were not established to translate correctly the requirements of FSAR section 9.2.1 and Technical Specification 3.7.4 into system configuration specifications for the emergency service water system. Specifically, the emergency service water system loops were not independent in that a single active failure of auxiliary reservoir return valve 1SW-270 to open coincident with a safety injection signal and a loss of offsite power would cause backflow from loop A to loop B through the "A" train emergency diesel generator jacket water heat exchanger which could result in inadequate cooling of all three charging safety injection pumps. (01013)

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

- B. 10 CFR 50.9, Completeness and Accuracy of Information, requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

Contrary to the above, Carolina Power and Light Company (CP&L) failed to provide complete and accurate information in their June 17, 1991 letter to the NRC. Specifically, the initial activities, testing, and continuing program to which CP&L committed in their January 26, 1991 response to Generic Letter 89-13 were not completed on May 20, 1991, as CP&L had stated in their June 17, 1991 letter. The activity not completed was the failure to obtain final management review and approval of the single failure review of the service water systems. This information was material to the NRC's understanding of CP&L's actions to ensure operability of safety-related service water systems. (02014)

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

Enclosure

Pursuant to the provisions of 10 CFR 2.201, CP&L 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 II, and a copy to the NRC Resident Inspector at the Shearon Harris Nuclear Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked "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. 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 17th day of November 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

December 7, 1994

EA 94-161

Entergy Operations, Inc.
ATTN: J. W. Yelverton, Vice President
Operations, Arkansas Nuclear One
Route 3, Box 137G
Russellville, Arkansas 72801

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 50-313/94-19; 50-368/94-19)

This is in reference to the August 1-4, 1994 inspection of the Arkansas Nuclear One (ANO) personnel access authorization program. A report describing the results of this inspection was issued on August 25, 1994. Three apparent violations were identified and were the subject of a September 7, 1994 enforcement conference in the NRC's Arlington, Texas office attended by you and other Entergy Operations, Inc. (Entergy), representatives.

The violations in the enclosed Notice of Violation (NOV) are related to two access authorization events that Entergy discovered and reported to the NRC and include: 1) granting unescorted access in February 1994 to an individual who had been convicted of a felony in the past five years; 2) failing to promptly suspend unescorted access for another individual in May 1994 when adverse reliability information became available from a check of the individual's criminal background information; and 3) failing to report the first event to the NRC within one hour of its discovery in April 1994. The NRC recognizes that in each case, unescorted access to ANO was revoked once the adverse reliability information was recognized or confirmed and that neither of the access authorization errors resulted in any incidents directly involving plant safety.

At the enforcement conference, Entergy admitted that a failure to adhere to ANO procedures resulted in an individual with a felony conviction being granted unescorted access (Violation A), as described in the enclosed NOV, and attributed this failure to administrative oversight and to misinterpretation of criminal history information provided by the FBI. Entergy contested the second violation (Violation B), contending that no violations of NRC requirements or ANO procedures occurred when ANO did not take immediate action to suspend the unescorted access privileges of a contract employee whose criminal background information indicated he had been arrested twice, though not convicted, on charges involving drug possession. Finally, Entergy questioned whether NRC regulations required the first access authorization failure to be reported within one hour of its discovery (Violation A). The NRC has considered Entergy's arguments on both contested violations but has concluded that the violations occurred.

With regard to the reporting violation, Entergy challenged the validity of this type of violation in a June 7, 1994 letter, which was answered by the NRC on September 16, 1994. As indicated in the NRC's response, events of the type in question are considered by the NRC to be significant and should be reported

within one hour of their discovery because they involve the granting of unescorted access to persons who should not have been granted unescorted access based on the information developed by and available to a licensee.

With regard to the second access-related violation, the NRC carefully examined the arguments that Entergy made at the enforcement conference. Entergy challenged this violation because: 1) Entergy was in possession of arrest information, but had no information on the disposition of the charges; 2) NRC requirements in 10 CFR 73.57 prohibit final unescorted access determinations on the basis of information received from the FBI involving an arrest more than one year old where there is no information on the disposition of the case or an arrest which resulted in a dismissal; and 3) FBI cautions against denying employment based on FBI-provided information until the applicant has been given an opportunity to correct or complete the record. While the NRC understands Entergy's arguments regarding liability concerns and the rights of individuals, the NRC is persuaded by the wording of ANO's procedures that the suspension of unescorted access in such cases was intended to be both immediate and temporary because it states that "unescorted access is immediately denied or withdrawn pending disposition of the adversity [emphasis added]." The temporary nature of the access denial or withdrawal implied by ANO procedures tends to negate Entergy's arguments related to final access authorization determinations. Furthermore, if there was a legitimate question about the validity of the adverse reliability information, there was nothing to preclude Entergy from granting or continuing access to the individual with the requirement that the individual be escorted at all times. The NRC concludes that ANO violated its procedures governing access suspensions upon the receipt of adverse reliability information. However, given the circumstances of this violation, particularly the fact that Entergy's procedures are more restrictive in this area than the applicable NRC regulations, we have classified this violation at Severity Level IV.

The NRC considers the access authorization failure in February 1994 to be more significant because ANO: 1) failed to adequately review the individual's application and missed the opportunity to note that he had committed a felony, 2) failed to adequately review the FBI report when it was received to take action on the individual's access authorization, and 3) failed to make a proper report when it finally determined that a violation had occurred. Therefore, in accordance with the Enforcement Policy, this violation has been classified at Severity Level III.

The NRC recognizes that Entergy has implemented corrective action at ANO and other Entergy sites to require a second review of access authorization information prior to granting access, to require a timely review of FBI records, and to adopt a more conservative approach on using temporary suspensions of access based on reasonable suspicion. At ANO itself, Entergy has implemented interim reportability and logging requirements, performed an internal assessment of the access authorization program and identified improvements to be made, issued a memo to ANO managers to heighten sensitivity to access requirements and has committed to a broader independent assessment of

the access authorization program which was scheduled to be completed by October 15, 1994.

In accordance with the Enforcement Policy, a civil penalty is considered for a Severity Level III violation. However, I have been authorized after consultation with the Director, Office of Enforcement not to propose a civil penalty in this case based on a consideration of the civil penalty adjustment factors. In particular, we considered the facts that: 1) Entergy discovered the access authorization failure; 2) Entergy took prompt corrective action to revoke access and developed broad corrective actions to address underlying weaknesses; and 3) Entergy's performance in security at ANO has been excellent, earning SALP category 1 ratings in each of the last two rating periods. While it is true that Entergy had at least one prior opportunity to discover the February 1994 event, the escalation of the civil penalty for this factor is outweighed by the mitigation for the factors described above. The remaining adjustment factors (multiple occurrences and duration) were not considered applicable in this case.

Entergy Operations, Inc., is required to respond to this letter and should follow the instructions specified in the enclosed Notice in preparing its response. In its response, Entergy should document the specific actions taken and any additional actions planned to prevent recurrence. After reviewing Entergy's response to this Notice, including its 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 response directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,

L. J. Callan
Regional Administrator

Dockets: 50-313; 50-368
Licenses: DPR-51; NPF-6
Enclosure: Notice of Violation

cc w/enclosure:

Entergy Operations, Inc.

ATTN: Harry W. Keiser, Executive
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Honorable C. Doug Lunningham
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Pope County Courthouse
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Winston & Strawn

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Arkansas Department of Health

ATTN: Ms. Greta Dicus, Director
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B&W Nuclear Technologies

ATTN: Robert B. Borsum
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214 South Morris Street
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Entergy Operations, Inc.

-5-

ABB Combustion Engineering
Nuclear Power
ATTN: Charles B. Brinkman
Manager, Washington
Nuclear Operations
12300 Twinbrook Parkway, Suite 330
Rockville, Maryland 20852

NOTICE OF VIOLATION

Entergy Operations, Inc.
Arkansas Nuclear One, Units 1 and 2

Dockets: 50-313; 50-368
Licenses: DPR-51; NPF-6
EA 94-161

During an NRC inspection conducted August 1-4, 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:

License Condition 2.D (Unit 1) and License Condition 2.c(4) (Unit 2) of the licensee's facility operating licenses require that the licensee fully implement and maintain the Commission approved Physical Security Plan, including amendments and changes made pursuant to the authority of 10 CFR 50.54(p).

Paragraph 1.2 of the licensee's NRC-approved Security Plan states, in part, that they shall perform all duties in strict accord with ANO and Entergy Operations Inc. policies and procedures.

Paragraph 6 of Attachment 3 to Security Procedure 1043.040 states, in part, that if the licensee determines that unescorted access would have been denied based on developed information, a 1-hour report to NRC is required after discovery of the new information.

Paragraph 1.3.1 of the ANO Industrial Security Plan requires Entergy Operations, ANO to meet Regulatory Guide (RG) 5.66 (dated June 1991) guidance. Paragraph 7.1 of RG 5.66 states that the licensee shall consider information obtained during the background investigation when making a determination to grant unescorted access based on the trustworthiness or reliability of the applicant. Paragraph 7.1 states, in part, that the licensee must consider the following in making a determination of trustworthiness or reliability: a) willful omission or falsification of material information submitted in support of employment or request for unescorted access authorization; b) illegal use or possession of a controlled substance without adequate evidence of rehabilitation; and c) a criminal history without adequate evidence of rehabilitation.

Paragraph 5.12.2 of ANO Security Procedure NO. A5.1, Rev. 0, dated April 27, 1992, states, "Denial of unescorted access authorization for a period of five (5) years is based on the following: Conviction of a felony offense within the five years preceding the date of application other than listed in 5.12.1."

Paragraph 5.10.4 of ANO Security Procedure No. A5.1, Rev. 0, dated April 27, 1992, states, "If adverse reliability information is developed during the course of the background investigation, unescorted access is immediately denied or withdrawn pending disposition of the adversity."

A. Contrary to the above:

1. On February 22, 1994, the licensee granted unescorted access to an individual who had been convicted of a felony offense within five

years of his request for unescorted access. Specifically, a contractor employee was granted unescorted access despite stating on his ANO Security Questionnaire, completed on January 25, 1994, that he had been arrested and convicted for a Class D Felony (Assault), on April 18, 1992.

2. On March 10, 1994, ANO reviewed the employee's criminal history record from the FBI which stated he had been convicted of the charge of Battery 2nd Degree in April 1992 but did not deny or withdraw the employee's access. The licensee did not recognize the criminal charge as a felony and take action to revoke the employee's unescorted access until April 7, 1994.
3. On April 7, 1994, the licensee failed to make a 1-hour report despite discovering that a contractor employee who had been granted unescorted access would have been denied access if the licensee had correctly reviewed available information. The employee was granted unescorted access after he had stated on his ANO Security Questionnaire on January 25, 1994 that he had been arrested and convicted of a felony within the past five years. The licensee did not make a report to the NRC until August 5, 1994. [01013]

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

- B.. Contrary to the above, from May 5-23, 1994, the licensee did not immediately withdraw temporary unescorted access for an individual despite receiving adverse reliability information from the FBI indicating the individual had been arrested for possession of a controlled substance. Specifically, the licensee failed to deny or withdraw temporary unescorted access when they became aware that FBI records indicated that a contractor employee had been arrested for possession of methamphetamine, a controlled substance. The employee's temporary access was finally denied on May 23, 1994, when the licensee determined that the employee was incarcerated in Dallas, Texas for violation of probation for the above offense. [02014]

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

Pursuant to the provisions of 10 CFR 2.201, Entergy Operations, 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 IV, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged 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 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, ¹Texas
this 7th day of December 1994

D. NON-LICENSED VENDOR (PART 21),
NO CIVIL PENALTY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 13, 1994

EA 94-049

Mr. Steve M. Quist, President
Rosemount Nuclear Instruments, Incorporated
8200 Market Boulevard
Chanhassen, Minnesota 55317

Dear Mr. Quist:

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 99900271/93-01 & OFFICE
OF INVESTIGATIONS CASE No. 4-90-009)

This letter concerns the Rosemount Nuclear Instruments, Incorporated (Rosemount) presentation given to NRC staff at a June 23, 1994, enforcement conference and the NRC staff conclusions based on NRC review of and deliberation on the circumstances in this matter. Our deliberations took into consideration all of the information obtained and developed by NRC staff from 1988 to the present.

In 1993, NRC staff conducted an inspection to follow up on an NRC concern regarding an oil-loss problem identified in Rosemount Model 1150-series pressure transmitters that could have resulted in undetectable degraded operation of Rosemount nuclear safety-related pressure transmitters. Based on that inspection and on the findings of a related Office of Investigation (OI) investigation, certain of your activities were found to be in violation of 10 CFR Part 21 (Part 21) requirements, as specified in the enclosed Notice of Violation (Notice). The violation is of concern because Rosemount did not fulfill its Part 21 responsibilities to its customers between 1984 and 1988, when Rosemount became aware of degraded operation of its 1150-series transmitters in nuclear safety-related applications due to oil-loss problems in the transmitter's sensor cell. Although the initiating events and Rosemount's initial Part 21 violation occurred a considerable time ago, they represent a significant weakness in the implementation of Rosemount's 10 CFR Part 21 and 10 CFR Part 50, Appendix B programs.

The NRC staff determined that in the mid-1980s, Rosemount provided incomplete and inaccurate information to NRC licensed facilities regarding the scope of the Rosemount transmitter oil-loss problem and that some Rosemount staff were not candid about providing comprehensive information regarding the oil-loss matter. Several licensees subsequently used this information, in part, for their evaluation of the deviation pursuant to 10 CFR Part 21. The documents and testimony that were reviewed by NRC staff indicated that Rosemount limited the oil-loss information it disclosed and the information disclosed was typically site specific. Further, Rosemount did not describe the sensor cell manufacturing and test weaknesses which could have allowed transmitters that exhibited slow leaks to be shipped to NRC licensees. These weaknesses in the manufacturing and test processes preceding the late 1980s were potentially generic, could have caused degraded transmitter operation in any of

Rosemount's 1150-series transmitters, and should have been sent to NRC licensees for evaluating their specific transmitter safety-related applications pursuant to 10 CFR Part 21.

Based on OI's investigation and the NRC staff's inspection, the NRC has concluded that Rosemount acted in careless disregard of 10 CFR Part 21 requirements and its own procedures by failing to adequately evaluate or to inform its customers of the potential for degraded transmitter operation as a result of sensor cell oil-loss. We have determined that Rosemount's actions in this period between 1984 and 1988 - the multiple opportunities to have recognized the generic implications of numerous 1150 series transmitter problems, the repeated failure to recognize these problems by experienced Rosemount personnel, and the reluctance of Rosemount personnel to allow candid communications in order to adequately inform customers of the deviations - reflect careless disregard for the requirements of 10 CFR Part 21. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, the failure to perform an adequate Part 21 review and to inform your customers of the potential for degraded operation of Rosemount's 1150-series transmitters in safety-related applications is being classified as a Severity Level II violation. Your past performance in this matter was unacceptable. A civil penalty has not been proposed inasmuch as we were not able to identify any Rosemount Director or Responsible Officer subject to 10 CFR Part 21 who knowingly and consciously failed to provide the notice required by 10 CFR 21.21. In addition, the general standard for imposition of a civil penalty against a licensee under Section 234 of the Atomic Energy Act of 1954, as amended, which is less specific and stringent than the "knowingly" and "consciously" standard for imposition of a civil penalty against a vendor pursuant to 10 CFR Part 21, does not apply in these circumstances.

The failure of the Rosemount staff to candidly inform NRC licensees of the potential oil-loss failure mode in the four years that Rosemount was aware of the problem constitutes a very significant regulatory concern and indicates significant weaknesses in your implementation and compliance with 10 CFR Part 21. The NRC staff does acknowledge that after the Part 21 responsibilities were discussed with Rosemount during the 1993 inspection effort, Rosemount undertook corrective action to preclude recurrence. For example, Rosemount has revised, and provided NRC staff with, its 10 CFR Part 21 procedure DP-N-1626, "Implementation of 10 CFR Part 21 for Deviations and Failures to Comply in Nuclear Products." The NRC staff also notes that the current Rosemount staff interactions with NRC seem more open and candid than in the past.

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 take in order 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. The NRC staff will review the adequacy of Rosemount's corrective actions during a future inspection.

Further, as a result of the inspection and investigation activities conducted by the NRC, the staff concluded that Rosemount provided inaccurate and incomplete information to the NRC during an April 13, 1989, public meeting regarding the failure experience of the Rosemount Model 1152 transmitter. However, the NRC staff found that Rosemount did not deliberately supply the NRC staff with inaccurate and incomplete information at this meeting. The NRC has not proposed any enforcement action for the inaccurate and incorrect statements made to the NRC and its licensees because the applicable regulation (10 CFR 50.9) applies to applicants and licensees and not an entity like Rosemount under the circumstances of this case. However, the staff has substantial concerns about this matter and the staff must emphasize that Rosemount's actions resulting in the submittal of inaccurate or incomplete information to the NRC and licensees are wholly unacceptable. The NRC expects all licensee and vendor communications to be complete and accurate, and to properly reflect situations that could have implications to public health and safety, especially where an evaluation pursuant to 10 CFR Part 21 is involved. Therefore, in addition to your response to the Notice, you are requested to provide, under oath or affirmation, a written description of those actions that Rosemount has taken or intends to take to ensure that information provided to the NRC or its licensees is complete, candid, and accurate in all material respects. The response to this request should be provided within 30 days of the date of this letter.

Additionally, it is noted that the NRC staff received a Rosemount letter dated September 28, 1994. In this unsolicited letter, Rosemount stated that it agreed with the NRC "views" expressed at the June 23, 1994 enforcement conference on the importance of 10 CFR Part 21 and was "pleased with the conclusion... that no deliberate violation occurred." Rosemount also stated, however, that it cannot concur in the view that Rosemount acted in careless disregard by failing to adequately identify and report potential defects in its Model 1153 pressure transmitters prior to December 1988. The NRC staff noted that Rosemount attached a 40 page enclosure to its letter that takes exception to a number of statements and conclusions delineated in NRC Inspection Report 99900271/93-01 which provided some of the bases for the enforcement action that is set forth in the attached Notice of Violation. The NRC staff has reviewed the information in the Rosemount letter and has determined that the letter does not provide new information or arguments that would cause any change in the staff's position or enforcement action.

Mr. Steve M. Quist

4

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,

A handwritten signature in cursive script, reading "Frank J. Miraglia".

Frank J. Miraglia, Deputy Director
Office of Nuclear Reactor Regulation

Docket No. 99900271

Enclosure:
Notice of Violation

cc: See next page

Mr. Steve M. Quist

5

cc: Mr. Kenneth E. Ewald, Business Unit Manager
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Mr. Paul Blanch
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Mr. Ernest Hadley
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Wareham, Massachusetts 02571

NOTICE OF VIOLATION

Rosemount Nuclear Instruments,
Incorporated
Chanhassen, Minnesota 55317

Docket No. 99900271
EA 94-049

During an NRC inspection conducted between February 1 and 4, and March 8 and 12, 1993, and an NRC investigation that was conducted between February 1990 and November 1993, the staff identified a violation of NRC requirements. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1993), the violation is listed below:

- A. Section 21.21, "Notification of failure to comply or existence of a defect," of the version of 10 CFR Part 21 in effect from January 1978 until July 1991, stated, in part:

Each individual, corporation, partnership, or other entity subject to the regulations in this part shall adopt appropriate procedures to (1) provide for (i) evaluating deviations or (ii) informing the licensee or purchaser of the deviation in order that the licensee or purchaser may cause the deviation to be evaluated unless the deviation has been corrected.

Rosemount Nuclear Instruments, Inc. is subject to 10 CFR Part 21.

Contrary to the above, the Measurement Division of Rosemount, Incorporated (Rosemount), Quality Implementation Procedure (QIP) 126(N), "Potential Defect or Deviation in Products for Nuclear Application," issued March 18, 1981, was not adequately established and implemented to ensure that deviations, as defined in 10 CFR 21.3(e), about which Rosemount did not have adequate knowledge of each of the applications at NRC licensee facilities, were either evaluated or transmitted to the applicable customer or licensee for evaluation. Specifically, between 1984 and December 1988, Rosemount failed to properly inform licensees of a potential for a sensor cell oil-loss problem that could occur in its nuclear-safety-related 1150-series pressure transmitters which could have caused safety limits to be exceeded or caused substantial safety hazards to exist at licensee facilities.

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

Notice of Violation

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Pursuant to the provisions of 10 CFR 2.201, Rosemount Nuclear Instruments, Incorporated is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555-0001 with a copy to the Chief, Vendor Inspection Branch, Division of Reactor Inspection and Licensee Performance, Office of Nuclear Reactor Regulation, 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: (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. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Rockville, Maryland
this 15th day of November 1994.

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

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Reactor Licensees
Quarterly Progress Report
October - December 1994

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Office of Enforcement
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Washington, DC 20555 - 0001

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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 reactor licensees 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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