Enforcement Actions: Significant Actions Resolved Medical Licensees

Quarterly Progress Report
January-March 1995

Manuscript Completed: May 1995
Date Published: May 1995

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

MASTER

DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED

rw

DISCLAIMER

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, make any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

DISCLAIMER

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

ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (January - March 1995) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to medical 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.

CONTENTS

	<u>Page</u>
ABSTRACT.....	iii
INTRODUCTION.....	1
SUMMARIES.....	3
MEDICAL LICENSEES	
A. INDIVIDUAL ACTIONS (*cases printed in previous volumes)	
* Paul A. Bauman IA 94-020.....	A-1
* Michael J. Berna IA 94-032.....	A-13
* Jerome E. Bodian, M.D. IA 94-023.....	A-21
* John W. Boomer IA 94-015.....	A-31
* Robert C. Dailey IA 94-003.....	A-40
* Jeffrey DeArmond IA 94-033.....	A-55
* Richard J. Gardecki IA 93-001.....	A-63
* William K. Headley IA 94-002.....	A-73
* William F. Kusmik IA 94-022.....	A-82
* Larry S. Ladner IA 94-019.....	A-95
* Stephen Mignotte IA 94-014.....	A-105
* Sean G. Miller IA 94-008.....	A-119
* Thomas A. Nisbet IA 94-031.....	A-131

CONTENTS (Continued)

* Richard E. Odegard
IA 94-018.....A-141

* Douglas D. Preston
IA 94-004.....A-151

Forrest L. Roudebush
IA 95-03.....A-160

* George D. Shepherd
IA 93-002.....A-171

* Guillermo Velasquez, M.D.
IA 94-013.....A-180

* David Tang Wee
IA 94-006.....A-189

Rex Allen Werts
IA 94-035.....A-202

B. CIVIL PENALTIES AND ORDERS

Cameo Diagnostic Centre, Inc., Springfield, Massachusetts
EAs 93-005, 94-035.....B-1

Nuclear Pharmacy of Idaho, Inc., Boise, Idaho
EA 94-096.....B-35

The Ohio State University, Columbus, Ohio
EA 94-215.....B-44

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

Department of the Navy, Naval Medical Center
Portsmouth, Virginia
EA 94-269.....C-1

Rockingham Memorial Hospital, Harrisonburg, Virginia
EA 94-047.....C-6

Veterans Affairs Medical Center, Memphis, Tennessee
EA 94-245.....C-11

ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED
MEDICAL LICENSEES

January - March 1995

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform NRC medical licensees about significant enforcement actions and their resolution for the first quarter of 1995. Enforcement actions are issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support (DEDS), and the Regional Administrators. The Director, Office of Enforcement, may act for the DEDS in the absence of the DEDS or as directed. The actions involved in this NUREG involve NRC's civil penalties as well as significant Notices of Violation.

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

A brief summary of each significant enforcement action that has been resolved in the first quarter of 1995 can be found in the section of this report entitled "Summaries." Each summary provides the enforcement action (EA) number to identify the case for reference purposes. The supplement number refers to the activity area in which the violations are classified according to guidance furnished in the U.S. Nuclear Regulatory Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, 57 Fed. Reg. 5791 (February 18, 1992). Violations are categorized in terms of five levels of severity to show their relative importance within each of the following activity areas:

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

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

Part B of this report consists of copies of completed civil penalty or Order actions involving medical licensees, arranged alphabetically. Part C includes copies of Notices of Violation that were issued to medical licensees for a Severity Level III 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.

William F. Kusmik

IA 94-022

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.

Larry S. Ladner

IA 94-019

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

Stephen Mignotte

IA 94-014

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

Sean G. Miller

IA 94-008

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

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.

Forrest L. Roudebush

IA 95-03

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC was issued March 3, 1995 to the above individual. The action was based on investigations that found that the individual was responsible for deliberate violations of NRC requirements, including providing inaccurate information to NRC inspectors and investigators, and that he was untruthful in his testimony before the Atomic Safety and Licensing Board. The Order prohibits the individual from becoming involved in licensed activities for a period of five years from the date that the NRC staff issued an immediately effective Order suspending the license of the company (October 17, 1991). After the five year prohibition the individual shall provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional five year period.

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.

Rex Allen Werts

IA 94-035

An Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately) was issued December 12, 1994 to the above individual. The action was based on an investigation that concluded that the above individual had deliberately falsified his identity to gain employment and unescorted access to the Brunswick facility. The Order prohibits the individual from engaging in NRC-licensed activities and from gaining unescorted access to protected and

vital areas of NRC-licensed facilities for a period of three years. After the three year prohibition the individual shall provide notice to the NRC of any employment in NRC-licensed activity for an additional five year period.

B. CIVIL PENALTIES AND ORDERS

Cameo Diagnostic Centre, Inc., Springfield, Massachusetts
Supplements VI and VII, EAs 93-005 and 94-035

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$1,750 was issued April 16, 1993. The action was based on (1) the willful use of NRC licensed material at a new location not authorized by the license, and (2) the willful failure to inform the NRC of such use without regard to prior notice that such use at a new location was prohibited without a license amendment authorizing work at the new location. The licensee responded in letters dated June 11 and July 23, 1993; objected to the characterization of the violations as willful, and to their classification at Severity Level III; protested the assessment of the civil penalty; and requested remission of the civil penalty. After consideration of the licensee's responses, the staff concluded that the licensee did not provide a sufficient basis for changing the characterization or the severity level, or mitigating the civil penalty. An Order Imposing Civil Penalty was issued November 24, 1993. The licensee requested a hearing on December 17, 1993. While the hearing was ongoing, the licensee decided to pay the civil penalty on January 18, 1995.

Nuclear Pharmacy of Idaho, Inc., Boise, Idaho
Supplement IV, EA 94-096

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued August 23, 1994, to emphasize the importance of ensuring compliance with NRC requirements that are designed to minimize radiation exposures to members of the public, as well as the importance of taking all necessary steps to achieve compliance when licensees have indications that limits may be exceeded. The action was based on the licensee's failure to ensure that releases of iodine-131 to unrestricted areas, when averaged over calendar year 1993, were within 10 CFR Part 20 limits. The licensee responded in letters dated October 18 and October 23, 1994, requesting mitigation of the civil penalty. After reviewing the responses and the new release limit for iodine-131 in 10 CFR 20.1302(b)(2)(i), the staff determined that the Severity Level III violation should be reclassified at Severity Level IV and the civil penalty was rescinded on January 18, 1995.

The Ohio State University, Columbus, Ohio
EA 94-215

A Confirmatory Order Modifying License (Effective Immediately) was issued November 8, 1994. The action was based on a significant breakdown in the management of the radiation program. A civil penalty was issued June 10, 1994 and as a part of the licensee's response, the

licensee provided a Radiation Safety Improvement Plan. The Order modifies the license to include the elements of the Improvement Plan, including milestones for accomplishments.

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

Department of the Navy, Naval Medical Center, Portsmouth, Virginia
Supplement VI, EA 94-269

A Notice of Violation was issued February 10, 1995, based on a violation involving the failure to include a written procedure in the licensee's medical quality management program to meet the objective that each administration is in accordance with the written directive as required in 10 CFR 35.32(a)(4). A civil penalty was not proposed because the licensee identified the violation, took prompt and extensive corrective actions, and the licensee had a good enforcement history.

Rockingham Memorial Hospital, Harrisonburg, Virginia
Supplements VI and VII, EA 94-047

A Notice of Violation was issued March 21, 1995, based on the unauthorized administration of licensed material to a nuclear medicine technologist and the failure to retain a record of the measurement of the radiopharmaceutical dosage that was injected into the technologist. A civil penalty was not proposed because the licensee identified the violation, took prompt and extensive corrective actions and had a good enforcement history.

Veterans Affairs Medical Center, Memphis, Tennessee
Supplement VI, EA 94-245

A Notice of Violation was issued February 27, 1995, based on a violation involving the use of licensed material in a manner not authorized by 10 CFR 35.57. A source was found taped under the center desk drawer of a physician's desk in the nuclear medicine department. The root cause of the violation was an apparent deliberate failure to adhere to procedures for the control of the source by a licensee employee. A civil penalty was not proposed because the licensee identified the violation, took prompt and extensive corrective actions and had good past performance.

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

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 Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

Paul A. Bauman)

IA 94-020

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

I

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

II

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

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

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

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

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

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

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

III

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

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

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

IV

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

For a period of three years from the date of the Order, Paul A. Bauman shall: Within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. In the first notification Mr. Bauman shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

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

shall set forth the matters of fact and law on which Mr. Bauman or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to . Paul A. Bauman if the answer or hearing request is by a person other than Paul A. Bauman. If a person other than Paul A. Bauman requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 10th 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.

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,

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

Enclosures:

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

cc w/encs:

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

SYNOPSIS

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

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

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

I

Jerome E. Bodian (Licensee or Dr. Bodian) was the holder of NRC License No. 29-12417-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on September 11, 1967 and last renewed in its entirety on August 20, 1990. The License authorized the Licensee to possess and use iodine-131 as iodide for uptake studies, thyroid imaging, and the treatment of hypothyroidism and cardiac 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

IA 94-015

John W. Boomer
ADDRESS DELETED

)
)
)
)
)

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, 161f, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. John W. Boomer is prohibited for three years from the date of this Order from any involvement in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

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

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

V

In accordance with 10 CFR 2.202, Mr. Boomer must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boomer or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Mr. Boomer if the answer or hearing request is by a person other than Mr. Boomer. If a person other than Mr. Boomer requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

MAR 22 1994

IA 94-003

Mr. Robert C. Dailey
(Address deleted)

Dear Mr. Dailey:

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

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

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

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

Robert C. Dailey

- 2 -

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

Sincerely,

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

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

Enclosure: As stated

cc w/enclosure:

Nuclear Support Services, Inc.
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Robert C. Dailey

)
)
)
)

IA 94-003

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

I

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

II

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

III

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

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

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

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

IV

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

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

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

V

Accordingly, pursuant to sections 62, 63, 81, 103, 161b, 161f, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 26.27, and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

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

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

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

VI

In accordance with 10 CFR 2.202, Robert C. Dailey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Robert C. Dailey or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

LBP-94-25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
US490

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.

SERVED AUG 18 1994

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

Docket Nos. EA 93-236
IA 94-003

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

ROBERT C. DAILEY

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

August 18, 1994

MEMORANDUM AND ORDER

(Approving Settlement Agreement and Terminating Proceeding)

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

9404015

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

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

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

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

IT IS SO ORDERED.

The Atomic Safety and
Licensing Board

Charles Beckhoefer, 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. Bailey, NEST and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on this 10th day of August, 1994.

James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

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

November 15, 1994

IA 94-033

Jeffrey DeArmond
[ADDRESS DELETED
UNDER 10 CFR 2.790]

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

Dear Mr. DeArmond:

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

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

Enclosures:

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
JEFFREY DEARMOND

)
)
)

IA 94-033

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

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

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

II

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

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

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

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

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

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

III

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

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

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

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Jeffrey DeArmond is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. The first time Mr. DeArmond is employed in NRC-licensed activities following the one-year prohibition, he shall, within 20 days of his acceptance of the employment offer involving NRC-licensed activities, notify the Director, Office of Enforcement, U. S. Nuclear Regulatory

Commission, Washington, DC 20555, and the Regional Administrator, NRC Region III. The notice shall include the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. DeArmond shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

In accordance with 10 CFR 2.202, Mr. DeArmond must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. DeArmond or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

May 4, 1993

IA 93-001

Mr. Richard J. Gardecki
(Address)

Dear Sir:

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

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

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Hugh L. Thompson, Jr.", is written over the typed name.

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

In the Matter of)
)
Richard J. Gardecki)
)
)

IA 93-001

I

II

A-64

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.

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. 20548-0001

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 20535. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20535, 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

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.

William F. Kusmick

3

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

Sincerely,

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

Enclosures:

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
DR. WILLIAM F. KUSMIK

)
)
)
)

IA 94-022

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

I

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

II

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

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

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

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

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

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

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

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

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

III

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

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

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

Therefore, the public health, safety and interest require that Dr. Kusmik: (1) be prohibited from being an authorized user and from acting as an RSO for a period of one year from the date of this Order; (2) for a period of three years from the date of the Order, notify the NRC within 20 days of his acceptance of an employment offer involving NRC-licensed activities; and (3) Dr. Kusmik, within 30 days from the date of this Order, provide a statement of his commitment to comply with NRC requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be effective immediately.

IV

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

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

the date of this Order. During this one-year period, an 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)(1), 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

)
)
)
)

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

I

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

II

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

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

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

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

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

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

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

III

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

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

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

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in

10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Larry S. Ladner is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Mr. Ladner must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.
2. For a period of two years after the three-year period of prohibition has expired, Larry S. Ladner shall within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Ladner shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Larry S. Ladner must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Larry S. Ladner or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Larry S. Ladner if the answer or hearing request is by a person other than Larry S. Ladner. If a person other than Larry S. Ladner requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

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

SYNOPSIS

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

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

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

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

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

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

JUN 28 1994

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

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

Dear Mr. Mignotte:

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

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

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

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

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

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

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

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

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

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

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

Mr. Stephen Mignotte

3

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

Sincerely,

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

Enclosures:

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

cc w/encl:
Resident Manager, IP-3

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

STEPHEN MIGNOTTE
Senior Reactor Operator

)
)
)
)

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

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

I

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

II

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

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

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

III

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

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

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

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

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

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

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

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

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

V

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

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

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

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

VI

In accordance with 10 CFR 2.202, Mr. Mignotte must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mignotte or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the

Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region I, U. S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406; and to Mr. Mignotte, if the answer or hearing request is by a person other than Mr. Mignotte. If a person other than Mr. Mignotte requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

NOTICE OF VIOLATION

Stephen Mignotte
Senior Reactor Operator

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

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

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

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

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

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

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

Notice of Violation

2

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

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

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

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

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

Dated in Rockville, Maryland
this 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 F. 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

)
)
)
)

[A 94-031]

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

I

Thomas A. Nisbet was employed as a Radiographer for Western Industrial X-Ray Inspection Company, Inc. (Licensee or WIX), Evanston, Wyoming, from May 1993 to June 1994, when the WIX license was suspended. WIX is the holder of License No. 49-27356-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the Licensee to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains in suspension while a hearing requested by the Licensee is pending. On September 27, 1994, the NRC issued an immediately effective Order to WIX to transfer material in its possession. In a provision that is not effective immediately, the Order also revoked the WIX license.

II

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

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

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

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

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

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

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

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

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

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

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

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

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

III

Based on the above, Thomas A. Nisbet has engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 34.44. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Nisbet's actions in causing the Licensee to violate 10 CFR 34.44 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Nisbet were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Thomas A. Nisbet be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order, and if he is currently involved with another NRC licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Nisbet is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nisbet's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Thomas A. Nisbet is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. The first time Mr. Nisbet is employed in NRC-licensed activities following the one-year prohibition, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

In accordance with 10 CFR 2.202, Mr. Nisbet must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nisbet or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Nisbet if the answer or hearing request is by a person other than Mr. Nisbet. If a person other than Mr. Nisbet requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

Dated at Rockville, Maryland
this 21ST day of October 1994

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

AUG 26 1994

IA 94-018

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

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

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

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

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

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

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

Sincerely,

A handwritten signature of James Lieberman in dark ink, written in a cursive style.

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Richard E. Odegard

)
)
)
)

IA 94-018

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

I

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

II

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

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

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

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

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

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

III

Based on the above, Mr. Odegard engaged in deliberate misconduct which caused AMSPEC to be in violation of the training requirements of License Condition 17 and NRC regulations, including 10 CFR 30.9 and 34.11(d). The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. Odegard's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate misrepresentations to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, specifically the requirement to provide complete and accurate information to the NRC. Mr. Odegard's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Odegard

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

IV

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

1. Richard E. Odegard is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those

activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Mr. Odegard must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Richard E. Odegard shall, within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Odegard shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

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

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

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

SYNOPSIS

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

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

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

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

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

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

APR 05 1994

IA 94-004

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

Dear Mr. Preston:

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

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

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

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

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

Mr. Douglas D. Preston

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

March 3, 1995

IA 95-03

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

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

Dear Mr. Roudebush:

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

The Order prohibits your involvement in NRC-licensed activities for a period of five years beginning October 17, 1991, the date of the Immediately Effective Order that suspended the license of PSI. In addition, for a period of five years after the five year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in licensed activities. Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order is subject to criminal prosecution as set forth in that section.

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Hugh L. Thompson, Jr.", is written over the typed name and title.

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

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

FORREST L. ROUDEBUSH
Kansas City, Missouri

IA 95-03

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

I

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

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

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

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

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

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

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

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

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

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

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

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

III

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

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

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

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

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

1. Forrest L. Roudebush is prohibited until October 17, 1996 from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of five years, beginning October 17, 1996, after the five-year period of prohibition has expired, Forrest L. Roudebush shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Forrest L. Roudebush shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

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

V

In accordance with 10 CFR 2.202, Forrest L. Roudebush must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Roudebush or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC

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

If a hearing is requested by Mr. Roudebush or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of the matters described in: (1) this Order; (2) EA 91-136; (3) EA 92-054; and (4) LBP-92-25, 36 NRC 156 (1992), this Order should be sustained.

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 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

- 8 -

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/encs:

Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

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

)
)
)
)

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

CONFIRMATORY ORDER

I

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

II

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

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

The NRC performed a routine inspection of the Licensee's facility in Rio Piedras, Puerto Rico on February 24, 1993. One purpose of this inspection was to determine the status of the strontium-90 source. The inspection revealed that the Licensee had continued to use the material (1) after expiration of the license; (2) after receipt of the NRC letter and Notice dated September 11, 1992, which directed the Licensee to place the material in storage and to discontinue use of the material until a new license was obtained; and (3) after the December 4, 1992 telephone conversation with the Region II inspector when the inspector explained that the source could not be used and the Licensee had stated the source was in locked storage and not being used.

In April and May 1993, the NRC Office of Investigations conducted an investigation of the circumstances surrounding the Licensee's apparent use of

the source after the license had expired and after receiving notification from the NRC to discontinue use of the material until a new license was obtained. As a result of this investigation, it was determined that on 20 occasions, between October 9, 1992, and February 19, 1993, the Licensee, with the full understanding that use of the source was prohibited, deliberately used the strontium-90 source for patient ophthalmic radiotherapy, in violation of 10 CFR 30.3. In addition, the investigation confirmed that the Licensee deliberately provided false information to the NRC inspector during the December 4, 1992 telephone conversation and during the inspection conducted at the Licensee's facility on February 24, 1993. Specifically, the Licensee told the NRC inspector that the strontium-90 source had not been used for ophthalmic radiotherapy since receipt of the Notice which was issued on September 11, 1992, when in fact the Licensee had used the strontium-90 source at least 20 times between October 9, 1992 and February 19, 1993, which was as recently as five days before the inspection. This deliberate submission of materially false information constitutes violations of 10 CFR 30.9 and 30.10.

III

Based on the NRC inspection and the subsequent investigation, the NRC determined that the Licensee, by continuing to use licensed material after being notified of the expiration of the license which authorized that use and by deliberately providing false information to an NRC inspector, had demonstrated an unwillingness to comply with Commission requirements. The Commission must be able to rely on its licensees to provide complete and accurate information. Willful violations are of particular concern to the

Commission because they undermine the Commission's reasonable assurance that licensed activities are being conducted in accordance with NRC requirements. Therefore, on July 21, 1993, the NRC issued an Order to the Licensee requiring the transfer of the strontium-90 source to an authorized recipient within 45 days of the date of the Order. The NRC also issued a Demand for Information with the Order requiring the Licensee to submit a written statement, under oath or affirmation, stating why the NRC should have confidence that in the future the Licensee would comply with NRC requirements or provide complete and accurate information to the NRC.

The Licensee responded to the Order in letters dated September 7 and 13, 1993, and in telephone conversations with the NRC Region II staff on September 10 and 20, 1993. During these communications, the Licensee indicated that he was making a good faith effort to transfer the byproduct material to an authorized recipient. Based on this good faith effort, the NRC by letter dated October 15, 1993, extended the strontium-90 transfer date to December 6, 1993. On January 24, 1994, the Licensee submitted a completed NRC Form 314 notifying the NRC that the strontium-90 source had been transferred to an authorized recipient and provided the documentation required by the Order to demonstrate that the source was tested for leakage prior to the transfer and that the transfer had taken place.

On September 13, 1993, the Licensee responded to the Demand for Information indicating that he did not intend to perform licensed activities or to use the strontium-90 source in his possession, or one in anyone else's possession. Further, in a telephone conversation on June 2, 1994, with Mr. Charles M.

Hosey of the NRC Region II office, Dr. Velasquez agreed to the provisions and to the issuance of this Confirmatory Order. I find that the Licensee's commitments as set forth in that conversation are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in the telephone call of June 2, 1994 be confirmed by this Order.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations at 10 CFR 2.202 and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED THAT:

1. For a period of three years from the date of this Confirmatory Order, Guillermo Velasquez, M.D., shall not supervise or engage in any way in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of three years from the date of this Order, Dr. Velasquez shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1. above) prior to his acceptance of employment with such prospective employer. The purpose of

this requirement is to ensure that the employer is aware of Dr. Velasquez' prohibition from engaging in NRC-licensed activities.

3. The first time Guillermo Velasquez, M.D., is employed in NRC licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, prior to engaging in NRC licensed activities including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

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

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the date of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900,

Atlanta, Georgia 30323 and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 1 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 CEC management. Both CEC 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 CEC 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

- 11 -

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 12, 1994

IA 94-035

Mr. Rex Allen Werts
(Address deleted
under 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
AND UNESCORTED ACCESS (EFFECTIVE IMMEDIATELY)
OI INVESTIGATION REPORT SYNOPSIS (2-93-052R)

Dear Mr. Werts:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effectively Immediately) is being issued as a consequence of the deliberate false statements you made on an application for access authorization at the Carolina Power and Light Company's (Licensee) Brunswick Nuclear Plant. On or about March 11, 1993, you used an alias on your access authorization application and indicated on the application that you had not been arrested or convicted of any criminal offense. As a result of your deliberate false statements, you were granted unescorted access to the Brunswick Nuclear Plant on March 24, 1993. The Licensee subsequently learned of your use of an alias and that you had been arrested and convicted several times for crimes and were incarcerated for some of those offenses. A licensee supervisor interviewed you about your application, at which time you admitted that you had submitted false information on your application.

10 CFR 50.5(a)(2), "Deliberate misconduct," prohibits an employee of an NRC licensee or licensee contractor from deliberately submitting information to the licensee or licensee contractor that the employee knows to be incomplete or inaccurate in some respect material to the NRC. 10 CFR Part 2, Appendix C, "General Statement of Policy and Procedures for NRC Enforcement Actions," in particular Section VIII, "Enforcement Action Involving Individuals," provides guidance and considerations for enforcement sanctions against individuals who deliberately violate NRC requirements.

The NRC Office of Investigations (OI) conducted an investigation (2-93-052R) to determine whether you committed a willful violation in connection with your making false statements regarding your criminal background. The OI investigation concluded that you had deliberately provided false information concerning your criminal arrest and conviction record in order to gain unescorted access to the site protected area. By letter dated September 14, 1994, the NRC attempted to provide you with a copy of the OI investigation synopsis and afford you an opportunity for an enforcement conference prior to making a final decision regarding escalated enforcement action in your case. The letter has been returned by the post office as undeliverable and we have been unable to locate you. A copy of the September 14, 1994, letter with the OI synopsis attached is enclosed (Enclosure 1). If attempts to deliver this letter and the enclosed Order are not successful, it will not delay the effective date of the enclosed Order nor the placement of this letter and enclosed Order in the Public Document Room.

Mr. Rex Allen Werts

- 2 -

The false information you provided regarding your criminal history on the March 11, 1993 access authorization application is a violation of 10 CFR 50.5, "Deliberate misconduct." Such conduct is unacceptable to the NRC. Therefore, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately). Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

You are required to provide a response to this Order and should do so within 20 days. Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

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

Sincerely,

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

Enclosures: 1. September 14, 1994 letter with OI synopsis
2. Order Prohibiting Involvement in NRC-Licensed
Activities and Unescorted Access (Effective Immediately)

cc w/encls: (See next page)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

REX ALLEN WERTS
(Also Known As:
MICHAEL ALLEN HUNTER)

)
)
)
)
)

IA 94-035

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

I

Mr. Rex Allen Werts (Also Known As: Michael Allen Hunter) was employed by Power Plant Maintenance, Inc., (PPM) a contractor of the Carolina Power and Light Company (CP&L or Licensee), from March 24, 1993 until his unescorted access was revoked on July 26, 1993. Licensee is the holder of License Nos. DPR-62 and DPR-71 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on December 27, 1974 and November 12, 1976, respectively. The licenses authorize the operation of the Brunswick Nuclear Plant in accordance with the conditions specified therein. The facility is located on the Licensee's site in Southport, North Carolina.

II

On March 24, 1993, Mr. Werts was granted unescorted access to the Brunswick Nuclear Plant, based in part on representations he made on an access authorization application, dated March 11, 1993, which he submitted to Power Plant Maintenance, Inc., (PPM), a contractor of the Licensee. In the application, Mr. Werts falsely represented himself as Michael Allen Hunter and stated that he had not been arrested or convicted of any criminal offense. In addition, Mr. Werts failed to correct that information after he was granted unescorted access and continued to hold that status on the basis of his false

identity. The Licensee submitted fingerprint cards completed by Mr. Werts to the Federal Bureau of Investigation (FBI) and subsequently was informed that Mr. Werts (alias Mr. Hunter) had a record of arrests, convictions, and imprisonments prior to 1990.

III

Based on the above, Mr. Werts engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2) which prohibits any employee of a licensee or licensee contractor from deliberately submitting to the licensee or licensee's contractor information the employee knows to be incomplete or inaccurate in some respect material to the NRC. Information concerning an individual's true identity and criminal history is material in that it is used by the Licensee to make determinations relative to the grant or denial of access authorization. If the Licensee had been given accurate information regarding Mr. Werts' criminal record, the Licensee would not have granted unescorted access to Mr. Werts.

The NRC must be able to rely on the Licensee, its contractors, and licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Werts' actions have raised serious concerns as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities can be conducted in compliance with the Commission's requirements

and that the health and safety of the public would be protected if Mr. Werts were permitted at this time to be involved in the performance of licensed activities or were permitted unescorted access to protected or vital areas of NRC-licensed facilities. Therefore, the public health, safety and interest require that Mr. Werts be prohibited from being involved in the performance of activities licensed by the NRC and be prohibited from obtaining unescorted access for a period of three years from the date of this Order. For a period of five years from the date of this Order, Mr. Werts is required to inform the NRC of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a three-year period from the date of this Order, Mr. Rex Allen Werts is prohibited from engaging in activities licensed by the NRC and is prohibited from obtaining unescorted access to protected and vital areas of facilities licensed by the NRC. For the purposes of this Order, licensed activities include the

activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

- B. For a five-year period from the date of this Order, Mr. Werts is required to provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities.

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

V

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

Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta St. N.W., Atlanta, Georgia 30323, and to Mr. Werts, if the answer or hearing request is by a person other than Mr. Werts. If a person other than Mr. Werts requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

- 6 -

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 12th day of December 1994

SYNOPSIS

On August 20, 1993, the U.S. Nuclear Regulatory Commission (NRC) licensee, Carolina Power and Light Company, submitted a Security Event Report to the NRC regarding an event at the licensee's Brunswick Nuclear Plant (BNP). The event described by the licensee involved an employee of a contractor who was granted unescorted access to the BNP vital and protected areas based on falsified employment and background information. This matter was referred to the NRC Office of Investigations (OI) Region II Field Office on September 1, 1993, for evaluation.

Based on OI review of the documentation and evidence obtained in this investigation, it is concluded that the subject deliberately falsified personal identification and background information to deceive the contractor, PPM, the licensee and the NRC in order to fraudulently obtain employment and unescorted access at the BNP.

B. MATERIALS LICENSEES, CIVIL PENALTIES AND ORDERS

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

APR 16 1993

Docket No. 030-29567
License No. 20-27908-01
EA 93-005

Mr. Paul Rosenbaum, President
Cameo Diagnostic Centre, Inc.
155 Maple Street
Springfield, Massachusetts 01105

Dear Mr. Rosenbaum:

Subject: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$1,750
(NRC Inspection Report No. 030-29567/92-001)

This letter refers to the NRC inspection conducted on December 29, 1992, at Cameo Diagnostic Centre, Springfield, Massachusetts, of activities authorized by NRC License No. 20-27908-01. The inspection report was sent to you on January 28, 1993. During the inspection, apparent violations of NRC requirements were identified. On February 18, 1993, a transcribed enforcement conference was conducted with you and other members of your staff to discuss the apparent violations, their causes and your corrective actions. The Enforcement Conference Report was sent to you under separate cover on March 10, 1993.

The violations are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). The first two violations, which are set forth in Section I of the enclosed Notice, involved (1) the willful use of NRC licensed material at a new location for approximately one month between November and December 1992, even though you were not authorized by your license to use licensed material at that location; and (2) the willful failure to inform the NRC of such use, even though you repeatedly were informed, in telephone conversations with the NRC on November 12, 19, and 25, 1992, as well as in an NRC letter dated November 13, 1992, that such use at the new location was prohibited without a license amendment or license renewal authorizing work at the new location.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 16 1993

Notwithstanding this prior notice, you continued using NRC regulated material at the unauthorized location and did not inform the NRC of such use, either during those telephone conversations, or afterwards, until the NRC independently learned, on December 11, 1992, that such use had been occurring at your new location since early November 1992. Your NRC license allowing use of radioactive material is a privilege granted to you under the provisions of the Atomic Energy Act, and the NRC expects and requires your continued compliance with all applicable regulatory requirements. Your actions in this case undermined the trust bestowed upon you in the NRC licensing process to protect public health and safety. In this case, you violated that privilege and trust. 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 III problem.

To emphasize the significance of willful violations of NRC requirements and the need for providing complete and accurate information to the NRC, 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 in the amount of \$1,750 for the violations set forth in Section I of the enclosed Notice.

The base civil penalty amount for a Severity Level III problem is \$500. The escalation and mitigation factors set forth in the enforcement policy were considered and the base civil penalty was increased by 250% to \$1,750. The penalty was escalated 50% based on the NRC identification of the violations; escalated 100% based on the existence of prior notice, as described above; and escalated 100% based on the duration of the violations. Your corrective action was not judged to be timely or self-initiated, and therefore, mitigation based on this factor is not appropriate. Mitigation based on licensee performance is not appropriate because the violations were willful.

The remaining violations are described in Section II of the enclosed Notice. The violations include: (1) the failure to ensure, through the Radiation Safety Officer (RSO), that radiation safety activities are performed in accordance with the approved procedures and regulatory requirements; (2) failure to develop and implement a written program to keep doses as low as reasonably achievable (ALARA); (3) failure to properly calibrate the survey meters; (4) failure to maintain proper dose calibrator calibration records; (5) failures related to required survey procedures; and (6) failure to include the range down to 10 microcuries in the dose calibrator linearity test.

APR 16 1993

Collectively, the remaining violations (Section II of the Notice) represent a lack of management attention toward licensed responsibilities. It is particularly troublesome to NRC that the RSO did not clearly understand or implement his responsibilities under the terms of your license, in that he failed to ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements. These violations indicate a need for increased management oversight of the radiation safety program, attention to detail by individuals using licensed material, and surveillance through comprehensive audits. Any similar problem in the future may result in escalated enforcement action.

The NRC recognizes that corrective actions, as mandated by the amended license conditions, and as described at the enforcement conference, have been taken to ensure that appropriate attention is provided to the radiation safety program to preclude the recurrence of such violations in the future. These actions included: (1) replacing the RSO; (2) implementing initial and subsequent periodic audits of the radiation safety program; and (3) providing training to the users of radioactive materials. The NRC also recognizes that you were issued a License Amendment on January 12, 1993, which allowed resumption of licensed activities at the new location, subject to certain conditions, including retraining of the users, and conduct of audits.

During the transcribed enforcement conference, you emphasized that Tc-99m is the only NRC-licensed material involved in your program, that it is obtained in unit doses from a local nuclear pharmacy, and that the radiation dose accumulated by your employees is very low. Based on your explanations, Violations II.B., II.C., II.E., and II.F. have been categorized at Severity Level V; however, if these violations recur, they will be considered to be more significant and may be subject to escalated enforcement action. Based in part on your explanations at the enforcement conference, and as further explained below, some apparent violations discussed at the enforcement conference are not being cited.

The failure to post a storage area with the appropriate caution sign is not being cited because it would normally be categorized at Severity Level V and was corrected during the inspection. Upon review of the guidance in Information Notice 93-10, the NRC staff has reconsidered the apparent violation involving failure to retest the dose calibrator upon reinstallation at your new address. Upon review of the guidance in Information Notice 89-74, we have also reconsidered the apparent violation involving failure to wipe test packages of empty, used radiopharmaceutical containers that you returned to the nuclear pharmacy. You should be aware; however, that a contamination survey of such packages is strongly recommended, and that a violation will be issued if contamination levels are found to exceed regulatory limits.

APR 16 1993

Although they are not being cited as violations, deficiencies in personnel training, and the knowledge of some authorized users regarding the patient dosage schedule, all of which are documented in the inspection report, should be addressed in the response to this letter, as required below. The NRC staff believes that inadequate training is a root cause of the violations in Section II of the Notice. Also, while the use of a standard patient dosage schedule is allowed under the NRC licensing scheme, all authorized users should clearly be familiar with it.

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 with regard to the violations in the enclosed Notice, as well as the deficiencies noted above, 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.

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. 96-511.

Sincerely,

Thomas T. Martin
Regional Administrator

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

ENCLOSURE

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Cameo Diagnostic Centre, Inc.
Springfield, Massachusetts 01105

Docket No. 030-29567
License No. 20-27908-01

During an NRC inspection conducted on December 29, 1992, 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. Violations Assessed a Civil Penalty

- A. 10 CFR 35.13(e) requires that a licensee apply for and must receive a license amendment before it adds to or changes the areas of use or address or addresses of use identified in the application or on the license.

Contrary to the above, as of November 3, 1992, the licensee changed the address and location at which byproduct material was used from 110 Maple Street, Springfield, Massachusetts to 155 Maple Street, Springfield, Massachusetts, and the licensee did not receive an amendment to authorize the change of location until January 12, 1993.

- B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the licensee did not provide to the Commission, information that was complete and accurate in all material respects. Specifically, the licensee did not inform the Commission that it had begun using licensed material at its new location (155 Maple Street, Springfield, Massachusetts), even though the licensee was reminded, in telephone conversations with the NRC on November 12, 19, and 25, 1992, and in a letter dated November 13, 1992, that licensed materials could not be used at the new location until a license amendment was obtained. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

These violations represent a Severity Level III problem (Supplements VI and VII).

Civil Penalty - \$1,750.

II. Other Violations of NRC Requirements

- A. 10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements. 10 CFR 35.21(b) requires that the Radiation Safety Officer shall establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure; the Radiation Safety Officer shall investigate spills; the Radiation Safety Officer shall brief management once each year on the byproduct material program; and the Radiation Safety Officer shall approve or disapprove minor changes in radiation safety procedures that are not potentially important to safety with the advice and consent of management.

Contrary to the above, as of December 29, 1992, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements. Specifically, the Radiation Safety Officer did not establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure; the Radiation Safety Officer did not investigate spills that occurred; the Radiation Safety Officer did not brief management once each year on the byproduct material program; and the Radiation Safety Officer did not approve or disapprove minor changes made to the radiation safety program.

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

- B. 10 CFR 35.20(a) requires that each licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

Contrary to the above, as of December 29, 1992, the licensee had not developed and implemented a written radiation protection program that includes provisions for keeping doses ALARA.

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

- C. 10 CFR 35.92(a) permits a licensee to dispose of byproduct material with a physical half-life of less than 65 days in ordinary trash, provided, in part, that the licensee first holds such byproduct material for decay a minimum of ten half-lives.

Contrary to the above, on May 31, 1988, July 5, 1988, August 29, 1988, December 20, 1990, June 28, 1991, December 6, 1991, and May 29, 1992, the licensee disposed of technetium-99m in ordinary trash without first holding some of this material for decay a minimum of ten half-lives. Specifically, licensee personnel informed the inspectors during the inspection that for all of these dates when the waste material was disposed, some of the waste material had been generated during scans performed during the 60 hours prior to the disposal, and therefore that material was not held for a minimum of 10 half-lives (60 hours for technetium-99m) prior to disposal.

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

- D. 10 CFR 35.51(a)(1) and (3) require, in part, that a licensee calibrate the survey instruments used to show compliance with 10 CFR Part 35 on all scales with readings up to 1000 millirem per hour with a radiation source, and that the licensee conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration.

Contrary to the above, as of December 29, 1992, four CDV-700 Geiger-Mueller survey instruments used by the licensee to show compliance with 10 CFR Part 35, had not been calibrated on the lowest scale, which has a maximum reading of 0.5 millirem per hour, and which is the scale most commonly used at the licensee's facility. Furthermore, the apparent exposure rate from a dedicated check source as determined at the time of calibration was not conspicuously noted on the instrument from April 1, 1987 through December 29, 1992.

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

- E. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries.

Contrary to the above, the licensee's dose calibrator linearity test performed December 1992 did not include the range from 200 microcuries down to 10 microcuries.

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

- F. 10 CFR 35.50(e), 35.50(e)(2), 35.50(e)(3) and 35.50(e)(4) require, in part, that a licensee retain records of tests for dose calibrator constancy, accuracy, linearity, and geometrical dependence, and that the records of tests for accuracy, linearity, and geometrical dependence include the signature of the Radiation Safety Officer.

Contrary to the above, as of December 29, 1992: (1) the licensee maintained records of only one check of dose calibrator constancy for each week of use, even though this test is required to be performed on a daily basis; and (2) the licensee's records of the accuracy, linearity, and geometrical dependence tests of its dose calibrator did not include the signature of the Radiation Safety Officer (RSO) nor did the RSO review these records.

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

- G. Condition 14 of Amendment 3 of License No. 20-27908-01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated October 8, 1986, and a letter dated November 20, 1986. Item 7 of the letter dated November 20, 1986, requires that area surveys be performed after each procedure. Item 17 of the application dated October 8, 1986, requires that area surveys include dispensing, preparation, injection, and imaging areas.

Contrary to the above, as of December 29, 1992, the licensee did not perform an area survey of dispensing, preparation, and imaging areas after each procedure. Specifically, the licensee performed surveys of only the injection area after each procedure.

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

Pursuant to the provisions of 10 CFR 2.201, Cameo Diagnostics Centre, Inc. (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 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 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 civil penalty.

Enclosure

6

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

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

Dated at King of Prussia, Pennsylvania
this 16th day of April 1993.

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

NOV 24 1993

Docket No. 030-29567
License No. 20-27908-01
EA 93-005

Cameo Diagnostic Centre, Inc.
ATTN: Mr. Paul Rosenbaum
President
155 Maple Street
Springfield, Massachusetts 01105

SUBJECT: ORDER IMPOSING A CIVIL MONETARY PENALTY - \$1,750

This letter refers to your letters, dated June 11 and July 23, 1993, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated April 16, 1993. Our letter and Notice described nine violations of NRC requirements. Two of the violations (involving the willful use of NRC licensed material at an unauthorized location and the willful failure to inform NRC of such use, even after repeated reminders that such use was prohibited until a license amendment was obtained) were classified in the aggregate as a Severity Level III problem. To emphasize the significance of willful violations of NRC requirements and the need for providing complete and accurate information to the NRC, a civil penalty in the amount of \$1,750 was proposed for these two violations. The other seven violations, involving various aspects of the radiation safety program, were classified individually as Severity Level IV or V violations, and no civil penalty was assessed for them.

In your response, you assert that public health and safety was never a concern, and that the fact that the NRC did not issue an immediate "cease and desist" order confirms your assessment that a change in location of licensed activities did not have radiological significance. In addition, for the reasons set forth in your response, as summarized in the Appendix attached to the enclosed Order, you objected to the willful characterization of the first two violations set forth in Section I of the Notice, disagreed with the Severity Level III classification, and claimed that the civil penalty should not have been assessed. Further, you denied three of seven violations set forth in Section II of the Notice for which no penalty was proposed.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

After consideration of your response, we have concluded, for the reasons given in the Appendix to the enclosed Order Imposing a Civil Monetary Penalty, that an adequate basis was not provided for changing the aggregate Severity Level III classification for the violations in Section I, changing the willful characterization of these violations, or mitigating the civil penalty. We have further concluded, for the reasons given in Enclosure 2, that a basis does not exist for withdrawing any of the three violations in Section II that you denied. Accordingly, we hereby serve on you the enclosed Order imposing a civil monetary penalty in the amount of \$1,750.

In addition, while you admitted in your response the violation involving improper oversight by the Radiation Safety Officer (RSO) (violation II.A), you state that the NRC itself is at fault for creating this problem. You indicated that in licensing physicians to become authorized users of byproduct material in humans or to act as an RSO, the NRC makes the assumption that any physician with certain specified training is qualified, and that NRC is negligent in not requiring its own competency examinations. Therefore, in this case, you contend that the NRC was negligent in not requiring proof of competency when it approved the credentials of the former RSO. The NRC notes that the regulations in 10 CFR Part 35 allow physicians with certain specified training to administer byproduct materials in humans or to become an RSO. However, as detailed in 10 CFR 35.21(a), licensee management has the ultimate responsibility for ensuring that the RSO effectively discharges the duties and responsibilities of that position. The NRC review and approval of the RSO credentials, as provided by you in your application, did not relieve you, as licensee management, of these responsibilities. Therefore, a violation of 10 CFR 35.21(a) related to the RSO function did occur as stated in the Notice.

In your response, you also claimed, "[T]he entire EA 93-005 episode. . . is due to an NRC representative bending 10 CFR 35.51 and the assumption that flowed from that example of regulatory flexibility." As an example of "flexibility in administering the rules of NRC", you cited a statement reportedly made by certain NRC personnel that indicated that the requirement for a 1000 mr/hr meter would be waived, but that Headquarters approval would be needed to allow 50 mr/hr meters if 100 mr/hr meters were not available. You stated that this example of flexibility was the basis of your belief "that NRC was flexible in requiring a fee for filing an amendment for an address change." However, the issue is not the fact that a fee is required for a license amendment, but rather the fact that you commenced the use of NRC-licensed materials at your new location before you received a license amendment that authorized you to do so. Regarding the need to obtain a license amendment before conducting NRC-licensed activities at an address not authorized in the license, the NRC

staff reminded you repeatedly (in a face-to-face meeting on October 21, 1992, in telephone conversations on November 12, 19, and 25, 1992, and via a letter dated November 13, 1992) that use of licensed material at the new location prior to receiving permission to do so via license amendment was prohibited by NRC regulations. Therefore, the NRC rejects your claim.

In your response to the Notice, you did not include the steps that you have taken to correct and prevent recurrence of the violations that you have denied. We are not requesting that you submit this information because you addressed the corrective actions for these violations in the application for renewal of your license, and the renewal, which incorporates your commitments, was issued August 16, 1993. We will review the effectiveness of your corrective actions during a subsequent inspection.

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

Sincerely,

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

Enclosures:

1. Order Imposing Civil
Monetary Penalty (w/Appendix)
2. Evaluation of Violations not
Assessed a Civil Penalty

cc w/encls:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Massachusetts (2)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-29567
CAMEO DIAGNOSTIC CENTRE, INC.	)	License No. 20-27908-01
Springfield, Massachusetts	)	EA 93-005

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

Cameo Diagnostic Centre, Inc. (Licensee), Springfield, Massachusetts, is the holder of Byproduct/Source Material License No. 20-27908-01 (License), issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

On December 29, 1992, the NRC performed an inspection of licensed activities at the Licensee's facility. During the inspection, nine violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice on June 11 and July 23, 1993. In its response, the Licensee objects to the characterization of Violations I.A and I.B as "willful", and to the classification of these violations at Severity Level III; protests the civil penalty assessed for Violations I.A and I.B; and requests remission of that penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, the Severity Level classification is appropriate, and the penalty proposed for Violations I.A and I.B should be imposed.

IV

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

The Licensee pay a civil penalty in the amount of \$1,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer,

payable to the Treasurer of the United States and
mailed to the Director, Office of Enforcement, U.S.
Nuclear Regulatory Commission, ATTN: Document Control
Desk, Washington, D.C. 20555.

V

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

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

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

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.A and I.B of the Notice referenced in Section II above, and
- (b) whether, on the basis of such violations, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

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

Dated at Rockville, Maryland
this 24th day of November 1993

APPENDIX

EVALUATIONS AND CONCLUSION

On April 16, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for nine violations identified during an NRC inspection. A civil penalty was proposed for Violations I.A and I.B. The licensee responded to the Notice in two letters, dated June 11 and July 23, 1993, and objects to the characterization of Violations I.A and I.B as "willful", objects to the classification of Violations I.A and I.B at Severity Level III, protests the civil penalty assessed for Violations I.A and I.B, and requests remission of that penalty. The NRC's evaluations and conclusions regarding the licensee's request are as follows:

1. Restatement of Violations Assessed a Civil Penalty

- I.A. 10 CFR 35.13(e) requires that a licensee apply for and must receive a license amendment before it adds to or changes the areas of use or address or addresses of use identified in the application or on the license.

Contrary to the above, as of November 3, 1992, the licensee changed the address and location at which byproduct material was used from 110 Maple Street, Springfield, Massachusetts to 155 Maple Street, Springfield, Massachusetts, and the licensee did not receive an amendment to authorize the change of location until January 12, 1993.

- I.B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the licensee did not provide to the Commission, information that was complete and accurate in all material respects. Specifically, the licensee did not inform the Commission that it had begun using licensed material at its new location (155 Maple Street, Springfield, Massachusetts), even though the licensee was reminded, in telephone conversations with the NRC on November 12, 19, and 25, 1992, and in a letter dated November 13, 1992, that licensed materials could not be used at the new location until a license amendment was obtained. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

These violations represent a Severity Level III problem (Supplements VI and VII).

Civil Penalty - \$1,750

2. Summary of Licensee Response Contesting the Severity Level III Classification of the Violations in Section I

The licensee, in its response, argues that Violations I.A and I.B do not fit the Severity Level III classification, and that the violations were not willful. In support of its contention that the two violations were not willful, the licensee states that it informed the NRC staff on October 21, 1992, that the licensee was moving the facility to a new address, and again on November 10, 1992, after the move was completed. The licensee contends that since the NRC did not issue an immediate "cease and desist order", the change in location of licensed activities did not have any radiological significance, and therefore does not match an example of a Severity Level III violation given in Supplement VI.C.10 of the NRC Enforcement Policy (Enforcement Policy). In pertinent part, that example states: "... a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance."

3. NRC Evaluation of Licensee Response

Some medical imaging activities conducted by Cameo Diagnostic Centre require an NRC license while others do not. The issue is not whether the licensee informed NRC that it was moving (or had moved), but rather whether the licensee willfully conducted NRC-licensed activities at the new address before it received a license amendment that authorized it to do so.

During the time period when the licensee informed the NRC staff that it was moving (and that it had moved), the NRC staff communicated with the licensee repeatedly to ensure that the licensee was not conducting NRC-licensed activities at the new address. These communications occurred during a face-to-face meeting with Mr. Paul Rosenbaum, the licensee's President on October 21, 1992, and, after the move, during telephone conversations with Mr. Rosenbaum on November 12, 19, and 25, 1992, and in a letter dated November 13, 1992. Despite these communications, Mr. Rosenbaum continued to conduct NRC-licensed activities at the new address, which was not an authorized location of use on the NRC license

(Violation I.A), and failed to inform the NRC staff that he was doing so (Violation I.B).

When the NRC staff did learn that NRC-licensed material was being used at the new address in violation of the NRC license, the NRC staff put an immediate stop to this unauthorized use by notifying the licensee's daily suppliers of NRC-licensed material that License No. 20-27908-01 did not authorize receipt or use of NRC-licensed material at the new address. Thus, there was no need to issue an Order.

The NRC staff did not rely on Supplement VI.C.10 of the Enforcement Policy to classify Violations I.A and I.B at Severity Level III. These violations were classified at Severity Level III because they were willful. The Enforcement Policy, Section IV.C, *Willful Violations*, states: "[T]he Severity Level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness." In the meeting, the numerous telephone communications, and the letter documented above, Mr. Rosenbaum was informed by the NRC staff that NRC-licensed material could not be used at a new location without a license amendment. Nonetheless, Mr. Rosenbaum continued the use of licensed material at the unauthorized new location, and did not inform the NRC that such use was occurring. This unauthorized use of material, and the failure to report such use to the NRC, notwithstanding the multiple notifications from the NRC, demonstrates, at a minimum, a careless disregard for NRC requirements, if not a deliberate attempt to circumvent the regulations by Mr. Paul Rosenbaum, the licensee's President. Therefore, the violations were clearly willful, as that term is used in the Enforcement Policy.

4. Summary of Licensee Response Requesting Mitigation of the Civil Penalty

The licensee protests the civil penalty and requests remission on the basis that the violations in Section I of the Notice were not willful, and did not represent a Severity Level III problem. The licensee also states that the \$1,750 civil penalty, being a 250% increase over the \$500 base penalty, was entirely unjustified, and was based on personal animus.

5. NRC Evaluation of Licensee Response

The reasoning that the NRC staff used in determining that the two violations were willful, and increasing the severity

level classification to Severity Level III based on the willfulness, is explained in Section 3 above.

The Enforcement Policy, Section VI.B, states that civil penalties are proposed (absent mitigating circumstances) for Severity Level III violations and may be proposed for any willful violation. As explained in the NRC's April 16, 1993 letter, in assessing the civil penalty amount, the base civil penalty was escalated by 250% because: (1) NRC identified the violations (50%); (2) the licensee had extensive prior opportunity to correct the violations because of the notice provided by the meeting, telephone communications, and letter documented above (100%); and (3) the duration of the violations continued from November 3, 1993, through December 11, 1993, and the NRC staff had to intervene to put a stop to them¹ (100%). These escalating factors were applied in accordance with the Enforcement Policy, Section VI.B.2. While the licensee asserted that the enforcement action was based on "personal animus", the licensee did not address the application of the escalation/mitigation factors in the Enforcement Policy.

With respect to the licensee's contention that this enforcement action was based on "personal animus", escalated enforcement actions, such as the one involved here, are arrived at after a multi-disciplinary and multi-level management review, which includes legal and technical personnel at both the NRC Regional and Headquarters level. This review ensures that a proposed enforcement action is taken in accordance with the guidance in the Enforcement Policy; and that the action is fair, objective and commensurate with the severity of the violations.

6. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for changing the characterization of Violations I.A or I.B as willful, changing the classification of these violations at Severity Level III, or mitigating the civil penalty. Accordingly, the NRC has

¹As documented in a Demand for Information issued to the licensee on December 17, 1992 (EA 92-246), the NRC staff learned of the violations on December 11, 1992, and asked Mr. Rosenbaum to voluntarily agree to stop using NRC-licensed materials at the unauthorized location; however, Mr. Rosenbaum refused. The NRC staff then had to put a stop to the violations by notifying the licensee's daily suppliers that the license did not authorize receipt or use of NRC-licensed material at the new address.

determined that a monetary civil penalty in the amount of \$1,750 should be imposed.

EVALUATION OF VIOLATIONS
NOT ASSESSED A CIVIL PENALTY

Of the violations not assessed a civil penalty, the licensee admitted Violations II.A, II.B, II.E, and II.F, and denied Violations II.C, II.D, and II.G.

Restatement of Violation II.C

10 CFR 35.92(a) permits a licensee to dispose of byproduct material with a physical half-life of less than 65 days in ordinary trash, provided, in part, that the licensee first holds such byproduct material for decay a minimum of ten half-lives.

Contrary to the above, on May 31, 1988, July 5, 1988, August 29, 1988, December 20, 1990, June 28, 1991, December 6, 1991, and May 29, 1992, the licensee disposed of technetium-99m in ordinary trash without first holding some of this material for decay a minimum of ten half-lives. Specifically, licensee personnel informed the inspectors during the inspection that for all of these dates when the waste material was disposed, some of the waste material had been generated during scans performed during the 60 hours prior to the disposal, and therefore that material was not held for a minimum of 10 half-lives (60 hours for technetium-99m) prior to disposal.

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

Summary of Licensee Response Denying Violation II.C

The licensee denies that it violated the requirement to hold byproduct material with a physical half-life of less than 65 days for decay a minimum of ten half-lives before disposal in ordinary trash. The licensee indicated that NRC inspectors made an assumption that waste discarded on days other than a Monday had less than 60 hours (ten times the half life of technetium-99m, commonly used by the licensee) old byproduct material waste.

NRC Evaluation of Licensee Response to Violation II.C

During the inspection, Mr. Rosenbaum indicated to the inspectors that he did not ensure that technetium-99m waste had decayed for ten half-lives prior to disposing of it. Specifically, Mr. Rosenbaum stated that, if he disposed of waste at the end of the day and a patient procedure had been performed that day, then the waste from the procedure was in the waste that he disposed. Mr. Rosenbaum stated that, so long as a survey of the bag containing the waste indicated background levels, the bag was disposed as ordinary waste. The inspectors determined from a review of the licensee's records that disposals had been made on certain dates and that a technetium-99m patient procedure had been performed within 60 hours prior to those disposals. Thus the violation is

based on Mr. Rosenbaum's statements and the inspectors' review of the licensee's records, and not mere "assumption" as the licensee argues. Accordingly, the NRC staff maintains that the violation did occur.

Restatement of Violation II.D

10 CFR 35.51(a)(1) and (3) require, in part, that a licensee calibrate the survey instruments used to show compliance with 10 CFR Part 35 on all scales with readings up to 1000 millirem per hour with a radiation source, and that the licensee conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration.

Contrary to the above, as of December 29, 1992, four CDV-700 Geiger-Mueller survey instruments used by the licensee to show compliance with 10 CFR Part 35, had not been calibrated on the lowest scale, which has a maximum reading of 0.5 millirem per hour, and that is the scale most commonly used at the licensee's facility. Furthermore, the apparent exposure rate from a dedicated check source as determined at the time of calibration was not conspicuously noted on the instrument from April 1, 1987 through December 29, 1992.

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

Summary of Licensee Response Denying Violation II.D

The licensee denied the violation involving survey instruments not calibrated on the lowest scale (with a maximum reading of 0.5 mr/hr) that is most commonly used at the facility. The licensee admits that the lowest scale was not calibrated, but denies that it was the most commonly used scale.

NRC Evaluation of Licensee Response to Violation II.D

10 CFR 35.51(a)(1) requires that the licensee calibrate all scales of survey instruments which measure radiation levels up to 1000 millirem per hour in the manner described. From March 1989 to the time of the inspection, the licensee did not have the lowest scale of its four CDV-700 Geiger-Mueller survey instruments calibrated. Furthermore, when, during the inspection, the technologists demonstrated their method of performing the various routine surveys, they indicated specifically that they use the most sensitive scale of these survey instruments which is the lowest scale. Therefore, the NRC concludes that failure to calibrate the lowest scale of survey instruments constitutes a violation of 10 CFR 35.51(a)(1).

Restatement of Violation II.G

Condition 14 of Amendment 3 of License No. 20-27908-01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated October 8, 1986, and a letter dated November 20, 1986. Item 7 of the letter dated November 20, 1986, requires that area surveys be performed after each procedure. Item 17 of the application dated October 8, 1986, requires that area surveys include dispensing, preparation, injection, and imaging areas.

Contrary to the above, as of December 29, 1992, the licensee did not perform an area survey of dispensing, preparation, and imaging areas after each procedure. Specifically, the licensee performed surveys of only the injection area after each procedure.

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

Summary of Licensee Response Denying Violation II.G

The licensee denied the violation involving its failure to perform area surveys of the dispensing, preparation, and imaging area after each procedure involving use of licensed material. The licensee contends that the term "each procedure" and the violation as written are too vague and without substantive meaning.

NRC Evaluation of Licensee Response to Violation II.G

The licensee's letter dated November 20, 1986 stated that "area surveys will be performed after each procedure". The licensee's application, dated October 8, 1986, in Item 17, requires that area surveys include dispensing, preparation, injection, and imaging areas. In the context of this licensee submittal, the NRC understands the term "procedure" to refer to a patient imaging procedure. As documented in the inspection report, during the inspection, the licensee's technologist reported to the NRC inspectors that only the injection area was surveyed after each patient imaging procedure. The licensee did not meet the requirement because the dispensing, preparation, and imaging areas where NRC-licensed material was used for the patient imaging procedure were not surveyed at the conclusion of the patient procedure.

The violation uses the same words as the licensee did in its submittal. Hence, the licensee's questioning of the meaning of the term "each procedure" and the argument that the violation is vague are without merit. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

NRC Conclusion

The licensee has not provided an adequate basis for withdrawal of Violations II.C, II.D or II.G. Therefore, the NRC staff concludes that these violations occurred as stated.

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

FEB 15 1994

Docket No. 030-29567
License No. 20-27908-01
EA 94-035

Cameo Diagnostic Centre, Inc.
ATTN: Paul Rosenbaum, President
Suite 102
155 Maple Street
Springfield, Massachusetts 01105

Dear Mr. Rosenbaum:

SUBJECT: ORDER MODIFYING ORDER IMPOSING CIVIL MONETARY
PENALTY - \$1,750

This refers to the Order Imposing Civil Monetary Penalty issued to you on November 24, 1993 (EA 93-005) (Order). The Order imposed a civil penalty of \$1,750 for violations set forth in a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) issued to you on April 16, 1993. By letter dated December 17, 1993, you requested a hearing on that Order. On February 1, 1994, the Atomic Safety and Licensing Board (ASLB) designated to preside in this proceeding held a prehearing conference.

Violation I.B., as set forth in the Notice and referenced in the Order, cited you for being in violation of 10 CFR 30.9(a) for a failure to provide to the Commission information that was complete and accurate in all material respects.

During the February 1, 1994 prehearing conference, the ASLB ordered the NRC staff, among other things, to prepare a brief addressing whether a total failure to provide material information to the Commission can, as a matter of law, constitute a violation of 10 CFR 30.9(a). The staff will be separately filing its brief on the ASLB's question. The NRC staff has reconsidered whether Violation I.B. as stated in the Notice fully reflected the facts of this case. After reviewing the facts, and statements made by the inspector and you, the NRC staff is modifying Violation I.B. for reasons stated in Section III of the enclosed Order.

You will need to respond to this modified Order within 20 days of the date of this Order by either requesting that the NRC proceed with the Licensee's December 17, 1993 request for a hearing or by withdrawing the Licensee's hearing request. The response to this Order shall be addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington,

Cameo Diagnostic
Centre, Inc.

- 2 -

D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

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

Enclosure: As Stated

cc w/encls:
Department of Public Health
Robert M. Hallisey, Director
Radiation Control Program
305 South Street, 7th Floor
Jamaica Plain, MA 02130

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CAMEO DIAGNOSTIC CENTRE, INC.	)	Docket No. 030-29567
Springfield, Massachusetts	)	License No. 20-27908-01
	)	EA 94-035

ORDER MODIFYING ORDER IMPOSING CIVIL
MONETARY PENALTY

I

Cameo Diagnostic Centre, Inc. (Licensee) is the holder of a Byproduct Material License No. 20-27908-01 (License) originally issued by the Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 29, 1992. During the inspection, nine violations of NRC requirements were identified. A Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 1993. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice on June 11 and July 23, 1993. In its response, the Licensee objected to the characterization of Violations I.A and

I.B as "willful", and to the classification of these violations at Severity Level III; protested the civil penalty assessed for Violations I.A and I.B; and requested remission of that penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff determined that the violations occurred as stated in the Notice, the Severity Level classification was appropriate, and the penalty proposed for Violations I.A and I.B should be imposed. Accordingly, the NRC issued an Order Imposing A Civil Monetary Penalty - \$1,750 on November 24, 1993. The Licensee responded in a letter dated December 17, 1993 and requested a hearing. On February 1, 1994, the Atomic Safety and Licensing Board (ASLB) designated to preside in this proceeding held a prehearing conference.

Violation I.B., as set forth in the Notice, cited the Licensee against 10 CFR 30.9(a) for a failure to provide to the Commission information that was complete and accurate in all material respects. During the February 1, 1994 prehearing conference, the ASLB ordered the Staff, among other things, to prepare a brief addressing whether a total failure to provide material information to the Commission can, as a matter of law, constitute a violation of 10 CFR 30.9(a).

III

The NRC staff has reconsidered whether Violation I.B. as stated in the Notice fully reflected the facts of this case. The original citation for Violation I.B. did not assert that a statement of the Licensee was inaccurate or incomplete, but rather, that the Licensee's omission constituted a violation of 10 CFR 30.9(a). After reevaluating the facts of this case, and statements made by the inspector and the Licensee, the staff is modifying Violation I.B based on an inaccurate statement made by the Licensee in answer to a question asked during a telephone call on November 12, 1992. This statement was confirmed in a letter issued the next day on November 13, 1992. Thereafter, during calls on November 19 and 25, 1992 the staff reiterated the need to obtain a license amendment before possessing material at the new location. However, the licensee did not correct the staff's understanding after receipt of the letter or during the November 19 and 25, 1992 telephone calls.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT VIOLATION I.B OF THE NOTICE AND ORDER BE MODIFIED TO READ:

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

Contrary to the above, the Licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, during a November 12, 1992 telephone conversation in response to a question from Region I as to whether the Licensee had licensed materials at its new address (155 Maple Street, Springfield, MA), the Licensee responded negatively. The licensee response was confirmed in a letter from NRC to the licensee dated November 13, 1992 which stated that it was the NRC "understanding that: ... 2. You [licensee] do not as yet possess any licensed radioactive material at this new facility." Therefore, the Licensee provided inaccurate information to the Commission in that it had possessed licensed materials at its new address. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

The Licensee shall respond to this modified Order within 20 days of the date of this Order by requesting that the NRC proceed with the Licensee's December 17, 1993 request for a hearing or by withdrawing its hearing request. The response to this Order shall be addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Atomic Safety and Licensing Board presiding over the proceeding on the December 13, 1993 hearing request and Counsel for the NRC staff in that proceeding at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If the Licensee withdraws its request for a hearing, payment of the civil penalty shall be made within 30 days of the date of this Order. If full payment of the civil penalty has not been made by that time, the matter may be referred to the Attorney General for collection.

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

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.A. of the Notice referenced in Section II above and Violation I.B. as modified in Section IV above, and
- (b) whether, on the basis of such violations, this Order should be sustained.

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 15th day of February 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

AUG 23 1994

Docket: 030-32223
License: 11-27398-01MD
EA 94-096

Nuclear Pharmacy of Idaho, Inc.
ATTN: Mr. Ned Gregorio
6053 Corporal Lane
Boise, Idaho 83702

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$7,500 (NRC INSPECTION REPORT NO. 030-32223/94-02)

This refers to the inspection conducted on May 16-17, 1994, at your facility in Boise, Idaho. A report describing the results of this inspection was issued on June 6, 1994. As described in the inspection report, the NRC identified an apparent failure to comply with NRC limits for releases of radioactive iodine-131 to the environment. On July 1, 1994, Nuclear Pharmacy of Idaho (NPI) representatives discussed this apparent violation during a telephonic enforcement conference with representatives from NRC's Region IV office in Arlington, Texas. A list of enforcement conference participants is enclosed.

Based on the results of the inspection and the information exchanged during the enforcement conference, the NRC concludes, using the best information available, that NPI's releases of iodine-131 in 1993 averaged 2.1×10^{-10} microcuries per milliliter (uCi/ml) of air, a value that is slightly more than twice the NRC limit of 1×10^{-10} uCi/ml that was in effect for 1993. Although you indicated in a June 30, 1994 letter to the NRC that this value could be further reduced if iodine-131 deposition on the surfaces of the exhaust stack were considered, you provided no information to suggest that you had made an assessment of this factor specific to your facility. Thus, the NRC has no reliable means of factoring this potential reduction into the final determination and has not considered it in concluding that you were in violation of the limits in 1993.

The NRC acknowledges that the safety significance of this violation is low and is mitigated by the fact that the release point is in a location where no members of the public would routinely be present, i.e., on the roof of your facility, minimizing the likelihood of members of the public receiving exposures of any consequence. The NRC also acknowledges that the iodine-131 release limit was increased to 2×10^{-10} uCi/ml effective January 1994 and that had this value been in effect in 1993 NPI would have exceeded the limit by only a small fraction.

However, while these factors tend to reduce the seriousness of this violation from a safety perspective, this remains a matter of significant regulatory concern to the NRC because the circumstances leading to this violation

indicate an inadequate understanding on your part of the importance of limiting releases of radioactive material to the environment. In NRC's revised 10 CFR Part 20 regulations, which became effective January 1, 1994, licensees are required, to the extent practicable, to use procedures and engineering controls to achieve occupational doses and doses to members of the public as low as reasonably achievable (ALARA).

The NRC first expressed concern about airborne releases from your facility in an inspection report issued April 6, 1993. In that report, we stated "One area you may wish to consider investigating further is that of airborne releases to unrestricted areas. While you had adequate records of these releases, it might be prudent to track them more closely and look for trends." This put you on notice that the NRC considered this an area that needed to be evaluated more thoroughly.

In information you provided just prior to the enforcement conference, i.e., your June 30, 1994 letter to the NRC, it is apparent that you were notified on several occasions in 1992 and 1993 by a consultant who performed quarterly audits of your activities that corrective actions were necessary to reduce iodine-131 emissions and keep them as low as possible. Despite these indications of the potential for exceeding NRC's release limits, and despite some limited corrective actions you took in response to your consultant's recommendations to reduce emissions, NPI now estimates that it exceeded NRC's iodine-131 release limits when averaged over calendar year 1993.

Accordingly, the violation of 10 CFR 20.106(a) described above has been classified at Severity Level III, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C (Supplement IV).

The NRC recognizes the corrective actions that you have taken since April 1994, including the purchase and installation of a filtered glove box to further reduce iodine-131 emissions and the hiring of a consultant to conduct a more detailed evaluation of releases from your facility. However, we believe these actions should have been taken more promptly, i.e., when your own consultant suggested to you in November 1993 that you obtain the services of a health physics consultant, when calculations available to you on December 31, 1993, showed that you had exceeded the release limits for 1993, or at the latest when the NRC raised this issue during its February 3-4, 1994 inspection.

To emphasize the importance of ensuring compliance with NRC requirements that are designed to minimize radiation exposures to members of the public, as well as the importance of taking all necessary steps to achieve compliance when you have indications that limits may be exceeded, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$7,500 for the Severity Level III violation described above and in the enclosed Notice.

The base value of a civil penalty for a Severity Level III violation is \$5,000. The civil penalty adjustment factors in the Enforcement Policy were considered and, on balance, resulted in a net increase equal to 50 percent of the base value. In applying these factors, the most significant increase (100 percent of the base value) was based on our conclusion, as discussed above, that you had several indications of a potential for noncompliance and did not take sufficient action to prevent the violation from occurring. This increase was partially offset by our conclusion that your past performance, as indicated by NRC inspections in May 1992, March 1993 and February 1994, was deserving of some mitigation (50 percent of the base value). No adjustment was made for corrective actions because, as explained above, while you had taken some actions in 1993 to reduce emissions, you did not implement comprehensive corrective action in a timely manner. In addition, no adjustment was made for identification because despite having indications of noncompliance available to you, it does not appear that you actually identified the violation until after the NRC's inspection in February 1994. The remaining adjustment factors in the Enforcement Policy were considered but no further adjustments to the base civil penalty were considered 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 enclosures, and your response 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,

L. J. Callan
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. List of enforcement conference participants

cc w/enclosures:

State of Idaho
EPA Region 10

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Pharmacy of Idaho, Inc.
Boise, Idaho

Docket: 030-32223
License: 11-27398-01MD
EA 94-096

During an NRC inspection conducted May 16-17, 1994, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 20.106(a) requires that, except as authorized by the Commission, no licensee release radioactive material to an unrestricted area in concentrations which exceed the limits specified in 10 CFR Part 20, Appendix B, Table II, when averaged over a period not greater than one year.

Contrary to the above, during the period ending December 31, 1993, the licensee released radioactive material consisting of iodine-131 to an unrestricted area in concentrations which exceeded the limits specified in 10 CFR Part 20, Appendix B, Table II, when averaged over a period not greater than one year. Specifically, stack effluent was released in a concentration of 2.1×10^{-10} microcuries per milliliter of air, which, when averaged over one year, exceeded the limit of 1×10^{-10} microcuries per milliliter of air in 10 CFR Part 20, Appendix B, Table II. [01013]

This a Severity Level III violation (Supplement IV).
Civil Penalty - \$7,500

Pursuant to the provisions of 10 CFR 2.201, Nuclear Pharmacy of Idaho, Inc. (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 to show cause why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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

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

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

The 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Dated at Arlington, Texas,
this 23rd day of August 1994

ENFORCEMENT CONFERENCE PARTICIPANTS

LICENSEE: Nuclear Pharmacy of Idaho, Inc.

TIME/DATE: 9 a.m. CDT, July 1, 1994

LOCATION: Conducted telephonically

EA NUMBER: 94-096

Nuclear Pharmacy of Idaho, Inc.

Ned Gregorio, President

Roger Hales, Attorney

NRC Region IV representatives

L.J. Callan, Regional Administrator

Ross A. Scarano, Deputy Director, Division of Radiation Safety & Safeguards

Charles L. Cain, Acting Chief, Nuclear Materials Inspection Branch

Linda L. Kasner, Senior Radiation Specialist, Nuclear Materials Inspection
Branch

Mark R. Shaffer, Senior Radiation Specialist, Nuclear Materials Inspection
Branch

Gary F. Sanborn, Enforcement Officer

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

January 18, 1995

EA 94-096

Nuclear Pharmacy of Idaho, Inc.
ATTN: Mr. Ned Gregorio
6053 Corporal Lane
Boise, Idaho 83702

SUBJECT: RECISION OF PROPOSED CIVIL PENALTY
(NRC INSPECTION REPORT NO. 030-32223/94-02)

Dear Mr. Gregorio:

This is in response to your October 18 and October 23, 1994, letters to the NRC, in which you requested full mitigation of a \$7,500 civil penalty that had been proposed by the NRC in a Notice of Violation (NOV) on August 23, 1994. The proposed civil penalty was based on a violation of 10 CFR 20.106(a), regarding releases of iodine-131 from your facility in calendar year 1993.

In your letters, you admitted that iodine-131 releases to the stack at your facility exceeded the limit in 10 CFR 20.206(a) for calendar year 1993, but indicated that the releases from the stack may have been within the regulatory limit based on deposition of iodine-131 on the interior surfaces of the exhaust stack. You also stated that the civil penalty was not necessary since corrective actions had begun before the NRC inspection that identified the violation.

The NRC has considered your response. As to your argument that a civil penalty is not necessary because corrective actions had begun before the inspection, civil penalties are assessed to deter *future* non-compliance and to emphasize the need for lasting corrective action. The deterrent effect is achieved when licensees, in order to avoid violations and civil penalties, take prompt and effective action to address problems in advance of any potential violation so that the violation does not occur and the NRC does not have to become involved.

In reconsidering the facts of this case, the NRC staff has determined that the violation is more appropriately categorized at Severity Level IV instead of Severity Level III, and this letter amends the record of this enforcement action accordingly. This decision was based on a reconsideration of the violation with respect to the examples in Supplement IV of the NRC's Enforcement Policy and the new release limit for iodine-131 in 10 CFR 20.1302(b)(2)(i), which became effective January 1994. The policy was revised to coincide with the revision to 10 CFR Part 20 and currently classifies releases that exceed the limits by a factor of two as Severity Level III violations. Since NPI's releases in calendar year 1993 were approximately twice the limit, and may have been less if any reduction is assumed for iodine deposition, the NRC has reduced the severity level of the violation in this specific case. Civil monetary penalties are not normally considered for

violations categorized at Severity Level IV and, therefore, the civil penalty proposed in the NRC letter dated August 23, 1994, is being rescinded. Our decision was not based on the revised estimates in your October 23, 1994 response. We are requesting further information concerning your calculations and assumptions as indicated below.

You indicated in your October 23, 1994 letter that you believe the releases from the stack were within regulatory limits. If you would like the NRC staff to consider withdrawing the violation, you should provide the following information:

1. Information to support the correction factor that you are using for concentration at the entrance to the stack vs. concentration at the release point. It is not clear that this factor was determined for the actual stack at the facility where the releases occurred and, if not, how and whether variables such as stack configuration, airflow, etc. were taken into account. Please include in your response the flow rate for the duct at the facility where the releases occurred. Additionally, please provide your rationale for assuming that iodine deposited in the ductwork remains there and does not re-enter the stack effluent with time.
2. Your rationale for use of the Code that you selected. We note that this Code was originated for use in reactor situations where a variety of nuclides are present in a single, simultaneous release. The Code also assumes that the internal surfaces of the duct readily absorb iodine and that there is no re-entrainment of the iodine after plateau.

This information should be addressed to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Since your October 18, 1994 letter indicates that you are using the correction factor that you developed to arrive at your current actual release concentrations, it is essential that you resolve the issue of whether or not the use of this factor is appropriate. Also, depending on the type of charcoal filter that you are now using, you should be aware that the efficiency of the filter may vary considerably over time. You should be able to demonstrate that your filter *consistently* provides any reduction that you are taking credit for.

The NRC recognizes the corrective actions that you have taken since April 1994, including the purchase and installation of a filtered glove box to further reduce iodine-131 emissions, and will evaluate the effectiveness of these corrective actions during future inspections.

Nuclear Pharmacy of Idaho, Inc. - 3 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room. If you have any questions about this matter, please contact Linda Howell of my staff at 817/860-8213.

Sincerely,

L. J. Callan
Regional Administrator

Docket No. 030-32223
License No. 11-27398-01MD

cc: State of Idaho
EPA Region 10

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

November 8, 1994

EA 94-215

The Ohio State University
ATTN: Cecil R. Smith, Dr. P.H.
Assistant Vice President
for Environmental Health
and Safety
1314 Kinnear Road
Columbus, Ohio 43210-1238

SUBJECT: CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)

Dear Dr. Smith:

The enclosed Confirmatory Order Modifying License (Effective Immediately) (Order) is being issued to confirm the commitments described in your Radiation Safety Improvement Plan (RSIP) submitted by letter dated August 2, 1994, with supplemental information provided by letter dated September 15, 1994. The RSIP describes the action you will take to strengthen the University's radiation safety program, including improvements in program oversight by the radiation safety committee and management.

Proper implementation of the RSIP will result in: (1) a system of ongoing evaluations of your radiation safety program to determine compliance with NRC regulations and license conditions; (2) an assessment of personnel training and improvements in user training including cross-training of radiation safety office health physicists; (3) a compilation of radiation safety deficiencies identified during program evaluations and a description of short term and long term corrective actions necessary to address those deficiencies for lasting corrective action; (4) an increase in health physicist, technician and support staff for the radiation safety office; (5) enhanced facilities and equipment for the radiation safety office; and (6) strong involvement of your senior management in assuring successful radiation safety program implementation.

In a telephone call with Ms. B. J. Holt, Chief, Nuclear Materials Inspection Section I, Region III, on November 4, 1994, you agreed to the issuance of the enclosed 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 should be addressed to Ms. B. J. Holt or Mr. Wayne Slawinski of the Region III office who can be reached at (708) 829-9836.

The Ohio State University

2

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

Sincerely,

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

James Lieberman, Director
Office of Enforcement

Docket Nos. 030-02640; 030-31605;
030-32479
License Nos. 34-00293-02;
34-00293-14; 34-00293-15

Enclosure: As stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket Nos. 030-02640;
	)	030-31605; and 030-32479
THE OHIO STATE UNIVERSITY	)	License Nos. 34-00293-02;
Columbus, Ohio	)	34-00293-14; and
	)	34-00293-15
	)	EA 94-215

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

The Ohio State University (Licensee) is the holder of eight NRC materials licenses, including broadscope License No. 34-00293-02; License No. 34-00293-14, authorizing use of cobalt-60 sources in a wet storage irradiator for in-water irradiation studies; and License No. 34-00293-15, authorizing use of a cobalt-60 source in a teletherapy unit for treatment of animals. The broadscope license authorizes the Licensee to possess, in part: (1) radiopharmaceuticals and brachytherapy sources in quantities as needed for medical diagnosis and therapy; (2) ten curies (370 GBq) of iridium-192 in a remote afterloading brachytherapy device for therapeutic treatments; (3) curie quantities of any byproduct material (with atomic numbers 1 to 83) in any form for research and development (R & D) pursuant to 10 CFR 30.4, and for student instruction and calibration of instruments; (4) curie quantities of any byproduct material (with atomic numbers 3 to 83) in the form of irradiated metals for R & D; and (5) millicurie to curie quantities of specifically-listed sealed and unsealed byproduct materials for use in analytical instruments, gauging devices, and for instrument calibration, student instruction and R & D. The broadscope license was issued on July 19, 1956, and is due to expire on June 30, 1997. License Nos. 34-00293-14 and 34-00293-15 expire on July 31, 1996 and December 31, 1996,

respectively.

II

Between September 27 and November 4, 1993, the NRC conducted a safety inspection of licensed activities at the Ohio State University authorized under License Nos. 34-00293-02, 34-00293-14 and 34-00293-15. Numerous violations and other concerns were identified during the inspection. The findings of the inspection were documented in Inspection Report Nos. 030-02640/93001, 030-31605/93001 and 030-32479/93001, issued to the Licensee on December 16, 1993.

The problems identified during the inspection were discussed with the Licensee during an Enforcement Conference held at the NRC Region III office on March 7, 1994. During the Enforcement Conference, the Licensee presented various corrective actions that were taken or were planned to be taken to prevent recurrence of the violations, ensure compliance with NRC requirements and strengthen its overall NRC-licensed programs.

On June 10, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of \$17,750 (EA 94-032). The Notice listed 32 violations covering numerous areas, including decommissioning funding, radiation safety requirements for irradiators, and medical quality management program requirements. The violations represented a significant breakdown in the management of the radiation safety program and consequently were of significant regulatory concern. The significance of the inspection

findings was exacerbated because many of the violations appeared to have been known or suspected to exist by those responsible for the radiation protection program, yet continued uncorrected. Moreover, conditions such as a lack of radiation safety office staff and adequate radiation safety office facilities were also known but were not corrected in a timely fashion. The root cause of the problems identified during the inspection was a lack of effective management involvement with NRC-licensed activities, coupled with a failure to provide sufficient resources for the radiation protection program.

The June 10, 1994, Notice required the Licensee to respond to the specific violations. In addition to that response, the NRC requested that, within 60 days of the Notice, the Licensee develop and submit a detailed Radiation Safety Improvement Plan (RSIP) that includes a description of the changes to be implemented, the specific improvements in management oversight, and the additional resources to be dedicated to upgrade the radiation safety program. The RSIP was to address several specific topics including a program of audits and surveillances to assess program effectiveness, a schedule for completing all actions described in the plan, and a system for monitoring and tracking the plan's completion status.

III

On July 8, 1994, the Licensee provided a written response to the Notice and remitted full payment of the \$17,750 proposed civil penalties. The Licensee did not contest the violations in the Notice except for one violation pertaining to the failure to complete an evaluation of radiation doses

incurred by an individual in September 1991. The NRC responded to the Licensee's July 8, 1994, submittal in a letter dated August 18, 1994.

On August 2, 1994, the Licensee submitted the requested RSIP. Following discussion of the RSIP with the Licensee, the Licensee submitted supplemental information in a letter dated September 15, 1994. Key elements of the RSIP include: (1) a system of ongoing evaluations of the radiation safety program to determine compliance with NRC regulations and license conditions; (2) an assessment of personnel training and improvements in user training including cross-training of radiation safety office health physicists; (3) a compilation of radiation safety deficiencies identified during program evaluations and a description of short term and long term corrective actions necessary to address those deficiencies for lasting corrective action; (4) an increase in health physicist, technician and support staff for the radiation safety office; and (5) enhanced facilities and equipment for the radiation safety office.

In light of the violations underlying the June 10, 1994, enforcement action, the public health and safety require improvement of the Licensee's radiation safety program. The NRC staff has reviewed the Licensee's RSIP, as supplemented, and finds that the commitments as set forth in its letters of August 2, 1994, and September 15, 1994, are acceptable and conclude that if these commitments are effectively implemented, 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 its August 2, 1994, and September 15, 1994, letters be confirmed by this Order.

The Licensee consented to the issuance of this Confirmatory Order during a telephone call between Ms. B. J. Holt and Mr. Wayne Slawinski, of the NRC Region III staff, and Dr. Cecil Smith, Assistant Vice President for Environmental Health and Safety, and Mr. Joseph Allgeier, Radiation Safety Officer, of the Licensee's staff on November 4, 1994. Pursuant to 10 CFR 2.202, I have also determined that, based on the Licensee's consent to this Order and the significance of the necessary program improvements described above, 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 20, 30 and 35, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY, LICENSE NOS. 34-00293-02, 34-00293-14 AND 34-00293-15 ARE MODIFIED AS FOLLOWS:

The Licensee shall complete the specific action items within the time limitations stated in the Radiation Safety Improvement Plan submitted to the NRC in its letter dated August 2, 1994, as supplemented by letter dated September 15, 1994. If additional time is required to meet a step or goal, a prior written request must be submitted with the reason for the request and the new time frame for completion. Until approved in writing by the Regional Administrator, Region III, the previously approved schedule must be met.

The Regional Administrator, Region III, may relax or rescind, in writing, any aspect of the above condition 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 its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, 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.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee 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 8th day of November 1994

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

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

February 10, 1995

EA 94-269

Department of the Navy
Chief of Naval Operations (N-45)
Navy Radiation Safety Committee
ATTN: RADM L. Schriefer
Chairman
Washington, DC 20350-2000

SUBJECT: NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 45-23645-01NA/94-10 (CORRECTED COPY)

Dear RADM L. Schriefer:

This refers to the inspection conducted by Mr. José Díaz Vélez of this office on November 28-29, 1994 of your Naval Medical Center at Portsmouth, Virginia and subsequent telephone conversations and reviews through January 17, 1994. The inspection was conducted to review a brachytherapy misadministration which occurred on November 16, 1994. The report documenting this inspection was sent to you by letter dated December 21, 1994. By letter dated January 11, 1995, we requested that you attend an enforcement conference to discuss the apparent violation, its cause, and your corrective actions to preclude recurrence. In a response dated January 17, 1995, you declined to attend an enforcement conference and provided additional information concerning the misadministration and your corrective actions for the event. We have reviewed the inspection results and the additional information you have provided and have concluded that sufficient information is available to determine the appropriate enforcement action in this matter.

The violation described in the enclosed Notice of Violation (Notice), involved the failure to include a written procedure in your quality management program (QMP) to meet the objective that each administration is in accordance with the written directive as required by 10 CFR 35.32(a)(4). Specifically, your quality management program did not include policies and procedures that addressed such items as the applicator source loading sequence and verification or that the sequence was in accordance with the written directive before administering the brachytherapy dose. Our inspection findings indicate that these procedural deficiencies contributed to the personnel error, which caused the November 16, 1994 misadministration.

Notwithstanding the conclusion that there were no significant adverse side effects or tissue injury to the patient, we are concerned with the medical center's QMP not containing sufficient procedures and your failure to timely correct the deficiencies identified in existing QMP procedures. 10 CFR 35.32(a) requires that the written quality management program provide high confidence that radiation from byproduct material will be administered as directed by the authorized user. The NRC entrusts the responsibility for implementation of a comprehensive quality management program to you, your

Radiation Safety Committee and the medical center. We expect that the program be reviewed for deficiencies and those deficiencies identified be timely corrected. Our inspection findings indicate that your Radiation Safety Committee, through the Navy Environmental Health Center, reviewed the medical center's program and prior to the November 16 misadministration, identified deficiencies that might have aided in preventing such a misadministration. However, these had not been fully corrected by the time of the misadministration. Therefore, 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 at Severity Level III.

The NRC understands that your corrective actions included prompt notification of the patient of the misadministration and the following changes to your quality management program: (1) a requirement that two persons be present during the loading of sources into carriers, including a trained radiation safety representative; (2) the use of forms and/or checklists to verify adequate implementation of all brachytherapy procedures; (3) improvements to the procedures to initiate brachytherapy treatments; and, (4) enhancements to the process for identification and handling of misadministrations. You also conducted a thorough review of NRC regulations and your brachytherapy program and enhanced your procedures to ensure that the procedures were detailed, clear and understandable. In addition, we understand that the Navy Environmental Health Center and the Deputy Navy Surgeon General have taken prompt action to ensure that Navy facilities are aware of this misadministration and will implement corrective actions to prevent recurrence.

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. The civil penalty adjustment factors discussed in Section VI.B.2 of the Enforcement Policy were considered. Mitigation of 50 percent was warranted because you identified the violation. The civil penalty was mitigated an additional 50 percent because your corrective actions were prompt and extensive. In addition, mitigation of 100 percent was warranted for your good past performance. We considered the information provided in your January 17, 1995 response regarding timeliness of corrective action for the September 1994 quality management program audit deficiencies. However, we determined that this audit did provide you prior notice to prevent the violation. Therefore, the civil penalty was escalated 100 percent as a result of your prior notice and failure to take effective corrective steps for the audit. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was considered appropriate. The application of the civil penalty adjustment factors resulted in full mitigation of the civil penalty for the violation.

In your response dated January 17, 1995, you requested that the NRC exercise discretion and refrain from issuing a Notice of Violation. You based your request on the following major points: (1) your corrective actions were correct and prompt; (2) the NRC's medical consultant concluded that the patient was appropriately treated after the misadministration; (3) your staff

medical physicist promptly admitted the error; (4) issuance of a violation could have a chilling effect on the medical community in regard to reporting errors; and, (5) issuance of a violation would not be in accordance with the NRC's policy to encourage and support licensee initiative for self-identification and correction of problems.

We considered these factors in determining the final enforcement action. In keeping with our Enforcement Policy, we fully mitigated the civil penalty based upon your self-identification and corrective actions. Because your program was deficient and procedures were not adequate, we have concluded that it is appropriate to issue a violation and categorize it as a Severity Level III violation.

The information you provided in your letter of January 17, 1995 demonstrated that a thorough review of this matter had been conducted by your staff and comprehensive corrective actions have been taken to assure compliance with regulatory requirements at your Portsmouth, Virginia facility and other Navy facilities. However, 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 any additional actions you plan to prevent recurrence. You may reference previously submitted information in your response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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.

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

In your letter of January 17, 1995, you noted minor corrections to the inspection report. A corrected copy of the inspection report is enclosed.

Department of the Navy

4

Should you have any questions concerning this letter, please contact Mr. Charles Hosey, Chief, Nuclear Materials Inspection Section, Region II, at 404-331-5614.

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No. 030-29462
License No. 45-23645-01NA
EA 94-269

Enclosures: 1. Notice of Violation
2. Corrected Copy of NRC Inspection
Report 45-23645-01NA/94-10

cc w/encs:
Commonwealth of Virginia

NOTICE OF VIOLATION

Department of the Navy
Naval Medical Center
Portsmouth, Virginia

Docket No. 030-29462
License No. 45-23645-01NA
EA 94-269

During an NRC inspection conducted on November 28-29, 1994, and subsequent telephone conversations and reviews through January 17, 1995, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

Pursuant to 10 CFR 35.32(a)(4), the quality management program must include written policies and procedures to meet the specific objective that each administration is in accordance with a written directive, which is defined in 10 CFR 35.2.

Contrary to the above, as of November 16, 1994, the licensee's quality management program did not include a written procedure to meet the objective that each administration is in accordance with the written directive. Specifically, the licensee's quality management program did not include policies and procedures for loading the applicator or verifying that the source loading sequence was in accordance with the written directive before administering a brachytherapy dose. (01013)

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

Pursuant to the provisions of 10 CFR 2.201, the Department of the Navy 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, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or 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 10th day of February 1995

Enclosure 1

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

March 21, 1995

EA 94-047

Rockingham Memorial Hospital
ATTN: Mr. T. Carter Melton
President
235 Cantrell Avenue
Harrisonburg, VA 22801

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 45-05594-01/94-01)
(Office of Investigations Report No. 2-94-006)

Dear Mr. Melton:

This refers to an investigation by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) completed on January 18, 1995, and a special inspection conducted by Mr. Lee Franklin of this office on January 11, 1994. During these reviews, the NRC examined the facts and circumstances surrounding the unauthorized administration of licensed material to a nuclear medicine technologist on December 9, 1993 at your Harrisonburg, Virginia facility. Based on the results of our reviews, violations of NRC requirements were identified. The subject inspection report and the synopsis of the OI investigation were sent to you by letters dated February 18, 1994 and February 16, 1995. A closed enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on March 1, 1995, to discuss the violations, their cause, and your corrective actions to preclude recurrence. The letter summarizing this enforcement conference was sent to you on March 7, 1995.

Violation I.A, described in the enclosed Notice of Violation (Notice), resulted when, on December 9, 1993, a nuclear medicine technologist injected approximately 10 millicuries of technetium-99m into a fellow technologist without obtaining authorization or being supervised by an authorized user pursuant to 10 CFR Part 35. The root cause of Violation I.A was an apparent deliberate failure to adhere to procedures by both of the technologists.

The NRC recognizes that this willful misuse of licensed material was identified by your staff. The actions of your employee who reported the misuse and your management's investigation of the event were commendable. We also recognize that during the enforcement conference, you stated that you had taken reasonable measures to ensure the proper use of licensed material and did not believe that you should be held responsible for employees who deliberately disregarded requirements for the control of licensed material.

Notwithstanding these comments, the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, states, in Section VI.A, that licensees are generally held responsible for the acts of its employees. The unauthorized use of a licensed radiopharmaceutical on a human being is of significant concern to the NRC. Willful violations are

also of particular concern to the NRC because we rely on licensee employees to act with integrity when fulfilling their licensed responsibilities. It is essential that the NRC be able to maintain the highest trust in individuals working with licensed material and that licensees ensure that personnel fully understand the importance of complying with regulatory requirements.

Violation I.B, described in the enclosed Notice, involved the deliberate failure to retain a record of the measurement of the radiopharmaceutical dosage that was injected into the technologist on December 9, 1993. Violations I.A and I.B, both of which resulted from the deliberate failure of the two technologists to adhere to procedures, have been classified in the aggregate as a Severity Level III problem in accordance with the Enforcement Policy.

The NRC understands that your corrective actions included: (1) a thorough investigation of the event by hospital supervisors and senior administration officials; (2) counseling and reprimands of the two technologists; and, (3) training for your staff on the event and the importance of procedural compliance.

In accordance with the Enforcement Policy, a civil penalty normally is considered for a Severity Level III violation or problem. Full mitigation of the civil penalty for the Severity Level III problem was considered appropriate in this case based on the application of the civil penalty adjustment factors discussed in Section VI.B.2 of the Enforcement Policy. Mitigation was warranted based on your identification of the violation, your prompt and extensive corrective actions, and your otherwise good performance, as indicated by your good enforcement history. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was considered appropriate.

The Enforcement Policy states that the severity level of a violation or problem may be increased if the circumstances involve willfulness. Further, the Enforcement Policy states that a civil penalty may be proposed for a willful violation. The NRC considered the need to increase the severity level of Violations I.A and I.B and the need to propose a civil penalty for the willful acts of misuse of licensed material and failure to retain records in this case. Violations I.A and I.B appear to have resulted from an isolated event committed by individuals working in direct violation of your policies and procedures. The individuals were non-supervisory employees, freely admitted the wrongdoing and accepted responsibility for the misuse during the investigation of this event. In addition, you took significant remedial action to demonstrate the seriousness of the violation. Your procedures at the time of the event provided adequate steps which if followed would have prevented the misuse. In addition, your nuclear medicine program has been found to be adequate in a subsequent NRC inspection. Based on these findings, we conclude that neither increases in the severity level of the violations nor the imposition of a civil penalty are needed to emphasize the need for lasting remedial action or to deter future violations in this area.

Violation II involved the failure to notify the Commission of the results of a leakage test, performed on October 26, 1992, on a strontium-90 sealed source that detected activity in excess of 0.005 microcuries. This violation has been categorized as a Severity Level IV violation.

For Violations I.A and I.B, you provided your corrective actions in the report of your investigation dated January 17, 1995 and in documents provided to the NRC during the transcribed enforcement conference conducted on March 1, 1995. The information you provided demonstrated that a thorough review of this matter had been conducted by your staff and comprehensive corrective actions have been taken to ensure compliance with regulatory requirements at your facility. Therefore, no further response associated with these violations is required.

Because Violation II was not a subject of the March 1, 1995 enforcement conference, you are required to respond to this letter with regard to Violation II and should follow the instructions specified in the enclosed Notice when preparing your response. In your response to Violation II, 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 reply 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 Action of 1980, Pub. L. No. 96-511.

Should you have any questions concerning this letter, please contact Mr. Charles Hosey, Chief, Nuclear Materials Inspection Section, Region II, at 404-331-5614.

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No. 030-03320
License No. 45-05594-01
EA 94-047

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Virginia
Chairman, Board of Trustees
Rockingham Memorial Hospital

NOTICE OF VIOLATION

Rockingham Memorial Hospital
Harrisonburg, Virginia

Docket No. 030-03320
License No. 45-05594-01
EA 94-047

During an NRC inspection conducted January 11, 1994 and an OI investigation completed on January 18, 1995, 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:

- I.A. 10 CFR 35.11 requires, in part, that a person not use byproduct material for medical use except in accordance with a specific license issued by the NRC or under the supervision of an authorized user as provided in 10 CFR 35.25. 10 CFR 35.2 defines authorized user as a physician, dentist, or podiatrist who is identified as an authorized user on a Commission license that authorizes the medical use of byproduct material. Condition 12 of License No. 45-05594-01 specifies the authorized users by name.

10 CFR 30.10(a) states, 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.

Contrary to the above, on December 9, 1993, two licensee employees deliberately used byproduct material without being supervised by an authorized user, and the employees' use of the byproduct material was not in accordance with a specific license issued by the NRC. Specifically, Nuclear Medicine Technologist A injected a dose of approximately 10 millicuries of technetium-99m into Nuclear Medicine Technologist B, who had prepared the dose and requested that Nuclear Medicine Technologist A administer it to her; and these actions on the part of both technologists were performed deliberately without the supervision of an authorized user. (01013)

- I.B. 10 CFR 35.53(c) requires that a licensee retain records of the measurement of radiopharmaceutical dosages for three years.

10 CFR 30.10 (a) 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.

Contrary to the above, on December 9, 1993, a licensee employee deliberately failed to record and retain a record of the measurement of a radiopharmaceutical dosage. (01023)

These violations represent a Severity Level III problem (Supplements VI and VII).

- II. 10 CFR 35.59(e) requires, in part, that a licensee file, within five days of the leakage test, a report of any sealed source leak test results that reveal the presence of 0.005 microcuries or more of removable contamination. The report must be filed with the appropriate NRC office listed in 10 CFR 30.6, and must include the equipment involved, the test results, and the action taken.

Contrary to the above, as of January 11, 1994, the licensee did not file a report with the Commission of the results of a leakage test, performed on October 26, 1992, that detected activity in excess of 0.005 microcuries on a strontium-90 sealed source. Specifically, the licensee determined a leakage of 0.82 microcuries, but failed to file the required report including equipment involved, the test results, and the action taken. (02014)

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

Pursuant to the provisions of 10 CFR 2.201, Rockingham Memorial Hospital 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 Chief, Nuclear Materials Inspection Section, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for Violation II only: (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 previously docketed correspondence, if the correspondence adequately addressed 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 actions 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 21st day of March 1995

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

February 27, 1995

EA 94-245

Veterans Affairs Medical Center
ATTN: Mr. K. L. Mulholland, Jr.
Director
1030 Jefferson Avenue
Memphis, Tennessee 38104

SUBJECT: NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 41-00119-08/94-01

Dear Mr. Mulholland:

This refers to the inspection conducted at your facility by Mr. Jerry D. Ennis of this office on November 17, 1994 and his in-office review of information on November 22, 1994. The inspection included a review of the facts and circumstances surrounding the unauthorized use of radioactive material discovered on May 24, 1993 at the Veterans Affairs Medical Center (VAMC), Memphis, Tennessee. Based on the results of the inspection, violations of NRC requirements were identified. The report documenting this inspection was sent to you by letter dated December 9, 1994. An enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on January 20, 1995 to discuss the violations, their cause, and your corrective actions to preclude recurrence. The letter summarizing this enforcement conference was sent to you on February 16, 1995.

Violation A, described in the enclosed Notice of Violation (Notice), involved the use of a 150 microcuries cesium-137 check source in a manner not authorized by 10 CFR 35.57 between May 21 and May 24, 1993. The source was found on May 24, 1993 taped under the center desk drawer of a physician's desk in the nuclear medicine department. The root cause of Violation A was an apparent deliberate failure to adhere to procedures for the control of the source by a licensee employee. The identity of the employee who deliberately placed the source under the desk could not be determined.

During the enforcement conference, you stated that you had taken reasonable measures to ensure the security and proper use of licensed material and did not believe that you should be held responsible for an employee who deliberately disregarded requirements for the control of licensed material. Notwithstanding these comments, the NRC Enforcement Policy states that a licensee is generally responsible for the acts of its employees. The deliberate placement of licensed material at a location which could have caused an individual to receive unnecessary radiation exposure is of concern to the NRC. It is essential that the NRC be able to maintain the highest trust in individuals working with licensed material and that licensees ensure that personnel fully understand the importance of complying with regulatory requirements. Willful violations are of particular concern to the NRC because we rely on licensees and their employees to act with integrity when fulfilling licensed responsibilities. Therefore, in accordance with the "General

ENCLOSURE

Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, Violation A has been categorized at Severity Level III.

The NRC understands that your immediate corrective actions included: (1) a complete investigation of the event; (2) rekeying the department's exterior doors on the afternoon of May 24, 1993; (3) limiting keys to the exterior doors to the assigned physician, the department supervisor, and security; and, (4) requiring other personnel to be escorted to the department by security personnel, who unlock the exterior door. In addition, interior doors were subsequently rekeyed and the stairwell door at the rear of the department was also alarmed.

In accordance with the Enforcement Policy, a civil penalty normally is considered for a Severity Level III violation. Full mitigation of the civil penalty for the Severity Level III violation was considered appropriate in this case based on the application of the civil penalty adjustment factors discussed in Section VI.B.2 of the Enforcement Policy. Mitigation was warranted based on your identification of the violation, your prompt and extensive corrective actions, and your recent good performance. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was considered appropriate.

Further, the Enforcement Policy provides that a civil penalty may be proposed for a willful violation. The NRC considered the need to propose a civil penalty for Violation A for the willful act of unauthorized use of licensed material. The violation appears to have been committed by an individual working in direct violation of your policies and procedures and contrary to training given your employees. During the enforcement conference, you stated that, prior to these events, specific training had been provided to your staff on what constituted misconduct and the consequences of misconduct in regard to licensed activities. You indicated that you reviewed information regarding the deliberate misconduct rule in the NRC's Office of Nuclear Material Safety and Safeguard's newsletter dated December 1991. Your program to control the source included proper storage facilities, adequate procedures for using the source, adequate checks to ensure that after authorized use it was returned to a locked storage container, and measures to ensure use only by authorized employees. Based on the facts and circumstances of this case and the actions you have taken to deter future violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty for Violation A.

Violations B and C, described in the enclosed Notice, involve the failures to perform a required dose calibrator constancy check, and to maintain accurate records. While Violation B may have been caused by pressure to promptly treat a patient, this does not excuse the failure of the technologist to perform the dose calibrator constancy check and the subsequent concealment of the failure by falsifying the dose calibrator constancy check record. The NRC normally would categorize Violation C at a Severity Level V; however, the severity level has been increased to a Severity Level IV violation because the records were deliberately falsified. As stated above, the NRC normally considers

imposition of a civil penalty for willful violations. We have concluded that a civil penalty for Violation C is not warranted because (1) you provided training in this area as discussed above; (2) the individual was a non-supervisory employee who independently acted in violation of your policies and procedures; (3) the technologist freely admitted the wrongdoing and accepted responsibility for the falsification during the investigation of this event; and (4) you took significant remedial action to demonstrate the seriousness of the violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any reply will be placed in the NRC Public Document Room (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 Mr. Charles Hosey, Chief, Nuclear Materials Inspection Section, NRC Region II, at (404) 331-5614.

Sincerely,

Stewart D. Ebnetter
Regional Administrator

Docket No.: 030-03253
License No.: 41-00119-08
EA 94-245

Enclosure: Notice of Violation

cc w/encl: State of Tennessee

NOTICE OF VIOLATION

Veterans Affairs Medical Center
Memphis, Tennessee

Docket No.: 030-03253
License No.: 41-00119-08
EA 94-245

During an NRC inspection conducted on November 17, 1994 and the in-office review of information on November 22, 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 35.57 authorizes, in part, medical use licensees to receive, possess, and use sealed sources for check, calibration, and reference use.

Contrary to the above, for some period of time between May 21 and May 24, 1993, a cesium-137 check source with a nominal value of 150 microcuries, was taped under the center desk drawer of a physician's desk in the nuclear medicine department, a use not authorized by 10 CFR 35.57. (01013)

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

- B. 10 CFR 35.50(b)(1) requires, in part, that a licensee check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use.

Contrary to the above, on May 22, 1993, the licensee did not check the dose calibrator for constancy with the dedicated check source and the dose calibrator was used to measure a patient's dose of a radiopharmaceutical on that day. (02014)

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

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

10 CFR 35.50(e) requires, in part, that a licensee retain records of constancy checks of the dose calibrator for three years unless directed otherwise.

Contrary to the above, the required record of the dose calibrator constancy check for May 22, 1993 was not complete and accurate in all material respects. Specifically, a technologist entered fabricated results in the daily dose calibrator constancy check record to make it appear as if the constancy check was performed, when in fact it was not. (03014)

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

Enclosure 1

Pursuant to the provisions of 10 CFR 2.201, Veterans Affairs Medical Center 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, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or 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 27th day of February 1995

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC. Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

NUREG-0940

Vol. 14, No. 1, Part 2
Medical Licensees

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved,
Medical Licensees
Quarterly Progress Report (January - March 1995)

3. DATE REPORT PUBLISHED

MONTH

YEAR

May

1995

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

Office of Enforcement

6. TYPE OF REPORT

Technical

7. PERIOD COVERED (Inclusive Dates)

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

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

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This compilation summarizes significant enforcement actions that have been resolved during one quarterly period (January - March 1995) and includes copies of letters, Notices, and Orders sent by the Nuclear Regulatory Commission to medical 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.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

Diagnostic Radiopharmaceuticals, Teletherapy, Brachytherapy,
Radiation Safety Program, Safety Evaluation, Quality Management
Program, HDR

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE