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

Quarterly Progress Report
January-March 1995

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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 material licensees (non-medical) with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

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

January - March 1995

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform NRC material licensees (non-medical) about significant enforcement actions and their resolution for the 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 material licensees (non-medical), arranged alphabetically. Part C includes copies of Notices of Violation that were issued to material licensees (non-medical) for a Severity Level I, II, or III violations, but for which no civil penalty was assessed.

SUMMARIES

A. INDIVIDUAL ACTIONS

Paul A. Bauman IA 94-020

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

Michael J. Berna IA 94-032

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

Jerome E. Bodian, M.D. IA 94-023

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

John W. Boomer IA 94-015

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

Robert C. Dailey

IA 94-003

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

Jeffrey DeArmond

IA 94-033

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

Richard J. Gardecki

IA 93-001

An Order Prohibiting Involvement in Certain NRC-Licensed Activities was issued May 4, 1993 to the above individual. The Order was based on the deliberate submittal of false information to former employers to obtain employment in licensed activities and to NRC investigators. The Order prohibits the individual, for a period of five years, from being named on an NRC license as a Radiation Safety Officer or supervising licensed activities for an NRC licensee or an Agreement State licensee while conducting activities within NRC jurisdiction. It also requires for the same period notice by copy of the Order to prospective employers engaged in licensed activities and notice to the NRC on acceptance of employment in licensed activities.

William K. Headley

IA 94-002

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

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

Babcock and Wilcox Company, Lynchburg, Virginia
Supplement VI, EA 94-169

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$37,500 was issued October 21, 1994, to emphasize the importance of management oversight of operations involving nuclear criticality safety. The action was based on two violations involving: (1) two examples of the failure to conduct activities involving licensed material in accordance with established nuclear criticality safety limits and controls; and (2) two examples of the failure to adequately consider pertinent process conditions and known modes of failure in establishing these safety limits. The licensee responded in letters dated November 20, 1994. After consideration of the licensee's responses, an Order Imposing Civil Monetary Penalty was issued February 27, 1995. The licensee paid the civil penalty on March 29, 1995.

Drexel University, Philadelphia, Pennsylvania
Supplements IV, V, VI, EA 94-167

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,250 was issued October 17, 1994, to emphasize (1) the importance of aggressive management oversight of the radiation safety program, so as to ensure that licensed activities are conducted safely and in accordance with requirements, and violations, when they exist, are promptly identified and corrected, and (2) the need for ensuring that the licensee's corrective actions are long-lasting. The action was based on violations of the radiation safety program which included, among others, the failure (1) of the Radiation Safety Committee to meet quarterly, (2) to provide radiation safety training to staff, (3) to leak test sealed sources, (4) to perform physical inventory sealed sources, (5) to label each container of licensed material, and (6) to survey licensed material in accordance with regulations in Part 20. The licensee responded in two letters dated November 14, 1994 and January 17, 1995. After consideration of the licensee's responses, part of one of the violations was retracted and the civil penalty was reduced from \$6,250 to \$5,000. An Order Imposing Civil Monetary Penalty in the amount of \$5,000 was issued February 8, 1995. The licensee paid the civil penalty on March 1, 1995.

Geo-Tech Associates, Fanwood, New Jersey
Supplement VI, EA 94-257

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued March 2, 1995, to emphasize the unacceptability of possessing byproduct material without a valid NRC

license, the unacceptability of the licensee's noncompliance with an August 11, 1992 Order to transfer the material, and the need for compliance with Commission requirements. The action was based on a problem involving possession of byproduct material approximately two years after the NRC license was revoked for nonpayment of annual fees. The licensee transferred the material to an authorized recipient on March 8, 1995. The NRC staff exercised discretion and rescinded the civil penalty and terminated the license on March 31, 1995.

Hawaiian Rock Products, Agana, Guam
Supplement VI, EA 95-026

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$150 was issued March 2, 1995, to emphasize the importance of correcting noncompliance and assuring that violations remain corrected. The action was based on violations involving the use of an asphalt content gauge by unauthorized individuals. The license requires that the gauge be used by or under the supervision of specifically designated individuals who have had the manufacturer's training course. The licensee responded and paid the civil penalty on March 23, 1995.

Hunt Concrete Company, Warrenton, Missouri
Supplement VI, EA 94-198

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 and Notification of Consideration of the Imposition of Daily Civil Penalties was issued November 16, 1994, to emphasize the unacceptability of possessing byproduct material without a license, the unacceptability of the company's noncompliance with the October 23, 1992 Order, and the need for compliance with Commission requirements. The action was based on the company's continued possession of licensed material in the form of cesium-137 and americium-241 in a sealed source in a moisture density gauge even though the license was revoked by an Order effective November 20, 1992, for failure to pay annual fees. The Order required proper disposal of radioactive material and submittal of a survey as provided by 10 CFR 30.36(c)(1). The company transferred the material to an authorized recipient on December 15, 1994. The NRC staff exercised enforcement discretion and rescinded the civil penalty on February 13, 1995.

Material Testing Laboratories, Inc., Norfolk, Virginia
Supplement VI, EAs 94-244 and 95-003

An Order Modifying License (Effective Immediately) and Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued February 9, 1995, to emphasize the need to conduct radiographic operations safely and in accordance with NRC requirements. The action was based on violations involving (1) use of NRC-licensed material by an unauthorized and unqualified individual, (2) failure to perform an adequate survey, (3) failure to maintain direct surveillance of radiographic operations, (4) failure to post the high radiation area, and (5) failure to post radiography vehicle as a radioactive material storage area. The Order required the licensee to take actions with regard to its Lorton, Virginia office. Specifically: (1) retain and maintain the services of a Radiation Safety Officer, (2) retain the

services of an independent consultant, (3) have the consultant submit an assessment report and quarterly audit, (4) submit a response to each audit report, (5) ensure that within 30 days of returning the radiographer, who was involved in the November 15, 1994 violations, to unsupervised work, an audit be conducted by the consultant quarterly for a period of one year, and (6) notify the regional office, for a period of one year, each week of the location in non-Agreement states where the radiographer will be conducting radiography operations. The licensee responded and paid the civil penalty on March 27, 1995. In responding to the action, the licensee informed the NRC that the Lorton, Virginia office was closed. On May 17, 1995, the Order was rescinded and the licensee's license was amended to require that the NRC be notified should the licensee open any new offices.

Nuclear Scanning Services, Inc., Houston, Texas
Supplement VI, EA 94-208

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,800 was issued January 10, 1995, to emphasize the significance of a deliberate violation of NRC requirements and the importance of properly notifying the NRC when licensed activities are going to be performed in NRC jurisdiction. The action was based on a violation involving a deliberate failure by the NSS president to file NRC Form 241 when conducting radiographic operations in NRC jurisdiction. The licensee responded and paid the civil penalty on January 24, 1995.

Safety Light Corporation, Bloomsburg, Pennsylvania
EA 89-029

An Order Modifying Licenses (Effective Immediately) and Demand for Information was issued March 16, 1989 requiring certain activities, including the preparation and implementation of a plan for both site characterization and decontamination of the Bloomsburg facility. The order was issued because of concerns as to the contamination of the soil and groundwater from activities conducted over many years. An Order Modifying License was issued August 21, 1989 based on the Corporations' failure to provide assurance for adequate funding to complete implementation of a satisfactory site characterization plan. The licensee requested a hearing after the NRC staff denied renewal of several of the Corporations' licenses. The Atomic Safety and Licensing Board approved an Agreement settling litigation between NRC and Safety Light Corporation on December 28, 1994, and the decision became final agency action on February 17, 1995.

Johnson Yokogawa Corporation, Newnan, Georgia
Supplement VI, EA 94-219

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$10,000 was issued December 13, 1994, to emphasize the importance of compliance with NRC requirements when performing work in areas under federal jurisdiction. The action was based on 1) the failure to provide the NRC prior notification of the conduct of licensed

activities in areas of NRC jurisdiction, and 2) the conduct of unauthorized activities in areas of NRC jurisdiction. The licensee paid the civil penalty on January 9, 1995.

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

Brucker Earth Engineering & Testing, St. Louis, Missouri
Supplement VI, EA 95-022

A Notice of Violation was issued February 13, 1995, based on a violation involving failure to keep a soil moisture/density gauge containing NRC licensed material under constant surveillance, which resulted in damage to the gauge. A civil penalty was not proposed because the licensee identified the violation, took corrective action and had a good radiation safety program administered by the radiation safety officer.

Calumet Testing Services, Inc., Griffith, Indiana
Supplement VI, EA 95-039

A Notice of Violation was issued March 28, 1995, based on a violation involving the theft of a truck which contained a locked radiography device containing about 80 curies of iridium-192. The radiographer had left the keys in the ignition when he went into a service station and when he came out, he observed the vehicle being driven away. The radiographer had the key to the device on his person. The truck was later recovered about three miles from where it was stolen. A civil penalty was not proposed because of the licensee's initiative in determining the root cause of the self-disclosing event, good corrective actions, and the licensee's good past performance.

Cumberland Village Mining Group, Nashville, Tennessee
Supplement IV, EA 94-246

A Notice of Violation was issued January 9, 1995, based on a violation involving the loss of a gauge containing byproduct material. The failure of the licensee to control the device during dismantling of the coal preparation plant resulted in the inadvertent shipment of the device in a load of scrap metal to a smelter in West Virginia. A civil penalty was not proposed because the loss of the device occurred more than three years ago, and the licensee no longer has a location where the devices would be used.

IRT Corporation, San Diego, California
Supplement V, EA 94-264

A Notice of Violation was issued January 6, 1995, based on a violation concerning the plutonium-beryllium source shipment problems identified to IRT by DOE in November 1994. The plutonium-beryllium source had been shipped via non-exclusive use vehicle in violation of DOT requirements and that the exposure rate at one meter was found to be approximately two times higher than the shipping papers stated. A civil penalty was not proposed because of the licensee's prior good enforcement history and that all radioactive materials under the license has been disposed pending termination of the license.

Gregory D. Fox, Houston, Texas
Supplement VI, IA 95-001

A Notice of Violation was issued January 10, 1995, based on a violation wherein the individual deliberately failed to submit the NRC Form 241 when Nuclear Scanning Services performed NRC-licensed activities in NRC jurisdiction. An Order Prohibiting Involvement in NRC-licensed activities was not issued because of 1) the corrective actions which included filing of NRC Form 241 and review of the NRC requirements, 2) the individual's training and experience as well as lack of knowledge of the potential consequences of the wrongdoing, and 3) the individual's candor in admission of the wrongdoing and acceptance of responsibility expressed during the enforcement conference.

OSi Specialities, Inc., Sistersville, West Virginia
Supplement VI, EA 94-270

A Notice of Violation was issued February 7, 1995, based on violations involving the modification of gauges containing sealed radioactive sources which were installed at the licensee's facility. A civil penalty was not proposed because the licensee identified the violation and conducted a thorough investigation of the event, and the licensee's corrective actions were prompt and extensive.

University of Pittsburgh, Pittsburgh, Pennsylvania
Supplement VI, EA 95-013

A Notice of Violation was issued February 23, 1995, based on a violation involving the failure to maintain operable an interlock to an irradiator room in the Montefiore Hospital. A civil penalty was not proposed because the licensee took prompt and comprehensive corrective action once the violation was identified, and the licensee has a good enforcement history.

U.S. Army Test, Measurement, and Diagnostic Equipment Activity
Redstone Arsenal, Alabama, Supplement V, EA 95-017

A Notice of Violation was issued March 1, 1995, based on a violation involving the failure to meet the requirements of 10 CFR 71.88 during shipment of a sealed source. The source, which was not packaged for air shipment, was subsequently transported by air. The violation was identified by personnel at Los Alamos National Laboratory. A civil penalty was not proposed because the licensee's corrective actions were timely and comprehensive and the licensee has a good performance record.

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

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IA 94-020

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

I

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

II

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

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

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

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

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

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

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

III

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

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

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

IV

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

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

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

V

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this ~~10~~¹⁴ day of August 1994

SYNOPSIS

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

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

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

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

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

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

November 15, 1994

IA 94-032

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

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

Dear Mr. Berna:

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

Enclosures:

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MICHAEL J. BERNA

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IA 94-032

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

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

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

II

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

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

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

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

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

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

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

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

The Licensee conducted an internal investigation and based on the results of its investigation the Licensee suspended Mr. Berna's employment for one month without pay. On December 1, 1992, a Confirmatory Order Modifying License (Effective Immediately) was issued to the Licensee, which confirmed, among other things, that the Licensee would prohibit Mr. Berna from participating in any NRC licensed activities, including the position of RS0.

III

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

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Berna were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Berna be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Berna is required to notify the NRC of his first employment in NRC-licensed activities licensed by the NRC following the prohibition period. Furthermore, pursuant to 10 CFR

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

IV

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

- A. Michael J. Berna is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. The first time Mr. Berna is employed in NRC-licensed activities following the three-year prohibition, he shall, within 20 days of his acceptance of the employment offer involving NRC-licensed activities, notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and the Regional Administrator, NRC Region III. The notice shall include the name, address, and telephone number of the employer or the entity where he is, or will be, involved

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

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

V

In accordance with 10 CFR 2.202, Mr. Berna must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Berna or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Berna, if the answer or hearing request is by a person other than Mr. Berna. If a person other than Mr. Berna requests a hearing, that person

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

SEP 08 1994

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

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

Dear Dr. Bodian:

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

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

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

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

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

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

Jerome E. Bodian, M.D.

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

Sincerely,

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

Enclosures:

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

cc w/encls:

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

SYNOPSIS

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

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

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

JERMOE E. BODIAN, M.D.
Englewood, New Jersey

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

CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

I

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

II

On April 6, 1992, an NRC inspection was conducted at the Licensee's facility in Englewood, New Jersey. During the inspection, the NRC identified several violations of NRC requirements, including the failure to possess and use a dose calibrator to assay therapeutic doses of iodine-131 prior to administration to patients. Also during the inspection, Dr. Bodian told the inspector that he took doses of iodine-131 to Englewood Hospital for calibration. During a telephone conversation with Region I staff on April 7, 1992, Dr. Bodian stated that: (1) although he did not possess a dose

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

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

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

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

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

III

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

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

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

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

IV

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

1. For a period of five years from the date of this Confirmatory Order, Jerome E. Bodian, M.D., shall not engage in any NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. When, for the first time, Dr. Bodian is employed in NRC-licensed activities following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, within 20 days prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC

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

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

V

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

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order (Effective Immediately) should be sustained.

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

JUL 14 1994

IA 94-015

Mr. John W. Boomer
ADDRESS DELETED

Dear Mr. Boomer:

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

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

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

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

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

Sincerely,

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

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

cc w/enclosure
Public Document Room

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John W. Boomer
ADDRESS DELETED

IA 94-015

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

I

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

II

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

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

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

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

III

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

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

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

IV

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

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

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

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

V

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

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

Pursuant to 10 CFR 2.202(c)(2)(1), Mr. Boomer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

MAR 22 1994

IA 94-003

Mr. Robert C. Dailey
(Address deleted)

Dear Mr. Dailey:

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

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

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

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

Robert C. Dailey

- 2 -

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

Sincerely,

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

Enclosure: As stated

cc w/enclosure:

Nuclear Support Services, Inc.
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Robert C. Dailey

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IA 94-003

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

I

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

II

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

III

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

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

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

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

IV

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

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

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

V

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

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

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

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

VI

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

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

DOCKETED
USNRC

Before Administrative Judges:

'94 AUG 18 P2 28

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the matter of

NUCLEAR SUPPORT SERVICES, INC.

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

ROBERT C. DAILEY

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

Docket Nos. EA 93-236
IA 94-003

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

August 18, 1994

SERVED AUG 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.

Page 1 of 3
August 10, 1994

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

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

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

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

8. NSSI and Mr. Dailey and the NRC Staff agree to file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 CFR § 2.203. If the Settlement Agreement is not approved or is changed in any substantive manner by the Board, it may be voided by any party by giving written notice to the parties and the Board. The parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

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

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

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

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

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

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

Page 1 of 3
August 10, 1994

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

IA 94-033

November 15, 1994

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Richard J. Gardecki

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IA 93-001

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

I

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

II

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

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

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

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

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

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

III

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

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

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

compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Gardecki were permitted at this time to be named as a Radiation Safety Officer (RSO) on an NRC license or permitted to supervise licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an Agreement State licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20.

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

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

IV

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

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

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

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

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

V

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

answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Richard J. Gardecki or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 799 Roosevelt Rd., Glen Ellyn, IL 60137, and to Richard J. Gardecki, if the answer or hearing request is by a person other than Richard J. Gardecki. If a person other than Richard J. Gardecki requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

MAR 14 1994

IA 94-002

Mr. William K. Headley
(Address Deleted)

Dear Sir:

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

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

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

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

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

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

Mr. William K. Headley

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its 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.

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

Sincerely,

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

Enclosures:

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

DR. WILLIAM F. KUSMIK

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)
IA 94-022

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

I

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

II

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

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

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

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

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

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

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

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

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

III

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

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

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

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

IV

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

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

the date of this Order. During this one-year period, an NRC licensee may allow Dr. Kusmik to perform NRC-licensed activities only if he is under the direct supervision of an authorized user as defined below. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Dr. Kusmik must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities.

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

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

3. The RSO shall:
 - a. ensure and document that he/she has provided training to Dr. Kusmik on the License, its conditions, and all applicable NRC requirements including the Licensee's radiation safety procedures;
 - b. perform documented audits of all NRC-licensed activities performed by Dr. Kusmik on quarterly basis; and
 - c. review and institute corrective actions for any violations noted.
 4. Records of NRC-licensed activities conducted by Dr. Kusmik must be retained until the next NRC inspection.
- B. For a period of three years from the date of the Order, Dr. Kusmik shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities.
- C. Dr. Kusmik shall, within 30 days of the date of this Order, provide a statement to the Director, Office of Enforcement, U. S. Nuclear

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

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

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

V

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

Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Kusmik if the answer or hearing request is by a person other than Dr. Kusmik. If a person other than Dr. Kusmik requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

Pursuant to 10 CFR 2.202(c)(2)(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
Larry S. Ladner

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IA 94-019

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

I

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

II

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

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

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

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

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

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

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

III

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

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

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

IV

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

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

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

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

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

SYNOPSIS

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

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

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

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

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

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

JUN 28 1994

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

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

Dear Mr. Mignotte:

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

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

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

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

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

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

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

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

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

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

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

Mr. Stephen Mignotte

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

Sincerely,

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

Enclosures:

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

cc w/encl:
Resident Manager, IP-3

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

STEPHEN MIGNOTTE)
Senior Reactor Operator)

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

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

I

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

II

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

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

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

III

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

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

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

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

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

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

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

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

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

V

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

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

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

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

VI

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

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

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

Pursuant to 10 CFR 2.202(c)(2)(1), Mr. Mignotte or any person adversely affected by this Order, may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

NOTICE OF VIOLATION

Stephen Mignotte
Senior Reactor Operator

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

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

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

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

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

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

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

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

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

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

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

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

Dated in Rockville, Maryland
this 28 day of June 1994

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

APR 21 1994

IA 94-008

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

Dear Mr. Miller:

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

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

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

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

Mr. Sean G. Miller

- 2 -

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

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

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

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

Sincerely,

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

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

cc w/enclosure:

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

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IA 94-008

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

I

Mr. Sean G. Miller was formerly employed by the Commonwealth Edison Company (CECo) from June 18, 1990, until he resigned his employment on December 2, 1992. He most recently held the position of Qualified Nuclear Engineer (QNE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. 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

IA 94-031

October 31, 1994

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

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

Dear Mr. Nisbet:

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

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

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

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

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

Sincerely,

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

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

Enclosure: As Stated

cc w/enclosure: State of Wyoming

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
THOMAS A. NISBET

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)

IA 94-031

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

I

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

II

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

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

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

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

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

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

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

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

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

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

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

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

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

III

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

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

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

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

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

AUG 26 1994

IA 94-018

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

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

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

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

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

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

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

Sincerely,

A handwritten signature of James Lieberman in 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

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IA 94-018

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

I

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

II

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

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

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

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

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

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

III

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

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

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

IV

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

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

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

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

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

V

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

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

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

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

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director
Office of Enforcement

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

SYNOPSIS

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

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

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

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

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

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

APR 05 1994

IA 94-004

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

Dear Mr. Preston:

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

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

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

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

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

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,

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

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)
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)

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,

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

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

Enclosure: As stated

cc: All Agreement States
Western Stress, Inc.
SECY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

IA 93-002

George D. Shepherd)
)

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

I

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

II

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

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

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

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

III

Based on the above, Mr. Shepherd engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 34.33(a), 34.43, 34.42, and 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to wear alarming ratemeters, to rope off and post the area of radiographic operations, and to perform post-exposure surveys. Compliance with NRC requirements as to posting and roping of radiation areas is necessary to protect members of the public, including licensee employees, from potential danger. Performance of a survey of the radiographic device after each exposure is an important safety requirement to prevent overexposures. Mr. Shepherd's deliberate actions in causing the Licensee to violate these requirements have raised serious doubts as to whether he can be relied on to comply with NRC requirements. Mr. Shepherd's deliberate misconduct cannot and will not be tolerated.

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

time to perform radiographic operations in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Shepherd be prohibited from performing or supervising licensed activities for either an NRC licensee or an Agreement State licensee (operating in areas of NRC jurisdiction in accordance with 10 CFR 150.20) for a period of two years from the date of this order. In addition, for a period of two years commencing after the two-year prohibition, Mr. Shepherd should be required to notify the NRC of his employment by any person (including any entity) engaged in licensed activities under an NRC or Agreement State license (where the work is performed in areas under NRC jurisdiction), so that appropriate inspections can be performed. During that same two-year period, Mr. Shepherd should also be required to provide a copy of this Order to any person employing him and who holds an NRC license or an Agreement State license and performs licensed activities in NRC jurisdiction. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the

Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. George D. Shepherd is prohibited for two years from the date of this Order from performing, supervising, or engaging in any way in licensed activities under an NRC license, or an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20.
2. For a period of two years commencing after the expiration of the two-year period of prohibition, George D. Shepherd shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, at least five days prior to the performance of licensed activities, of his being employed to perform or supervise such licensed activities. Licensed activities include those performed for an NRC licensee or an Agreement State licensee doing work in areas of NRC jurisdiction. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. In addition, for that same period of two years commencing after completion of the two-year period of prohibition, Mr. Shepherd shall provide a copy of this Order to his employer prior to performing licensed activities in areas of NRC jurisdiction

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

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

V

In accordance with 10 CFR 2.202, George D. Shepherd must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which George D. Shepherd or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101

Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to George D. Shepherd if the answer or hearing request is by a person other than George D. Shepherd. If a person other than George D. Shepherd requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

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

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

ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE
EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

JUN 03 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

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

CONFIRMATORY ORDER

I

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

II

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

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

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

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

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

III

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

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

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

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

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

IV

Accordingly, pursuant to Sections 81, 161b, 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 2 day of June 1994

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

APR 21 1994

Docket No. 55-30849
License No. SOP-30516-01
IA 94-006

Mr. David Tang Wee
[Home Address Deleted
Under 10 CFR 2.790]

Dear Mr. Tang Wee:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY
(NRC INSPECTION REPORT NO. 50-237/92033; 50-249/92033;
NRC INVESTIGATION REPORT NO. 3-92-055R)

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

On September 18, 1992, a rod mispositioning event occurred when a Nuclear Station Operator (NSO) moved a control rod out of sequence during your shift as the Station Control Room Engineer (SCRE). The error was noticed by a Qualified Nuclear Engineer (QNE). The NSO continued to move control rods in violation of station procedures, at the QNE's direction and without your knowledge or authorization, after which the QNE informed you of the mispositioned rod. Subsequently, you, the NSO, the QNE, and the two nuclear engineers in training who were present during the incident, agreed not to tell anyone else about the mispositioned rod incident. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, a Dresden Form 14-14C was falsified, and Commonwealth Edison Company (CECo) management was not informed of the incident. The OI investigation also concluded, based on the testimony of three other individuals involved in the September 18, 1992 incident, that you deliberately provided inaccurate information to NRC investigators

during your transcribed interview on December 1, 1992 when you denied making a statement to the effect that the information about the mispositioned control rod should not leave the control room.

Your actions in connection with the attempt to conceal the September 18, 1992 event caused CECO to be in violation of its license conditions, including technical specifications and administrative procedures, and constituted a violation of 10 CFR 50.5(a), "Deliberate Misconduct". Furthermore, your provision of inaccurate information which was material to NRC investigators constituted a violation of 10 CFR 55.9, "Completeness and Accuracy of Information".

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

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

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

Sincerely,

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

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

cc w/enclosure: See Next Page

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	Docket No. 55-30849
David Tang Wee	)	License No. SOP-30516-01
Tinley Park, Illinois	)	IA 94-006

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

I

Mr. David Tang Wee (Licensee) held Senior Reactor Operator's License No. SOP-30516-01 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 14, 1985. Mr. Tang Wee was employed by Commonwealth Edison Company (CECo) between June 22, 1981 until his employment was terminated by CECO on December 2, 1992, an action which terminated license SOP-30516-01. The Licensee most recently held the position of Station Control Room Engineer (SCRE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECO holds Facility Licenses DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize CECO to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois.

II

On November 24, 1992, CECO notified the NRC that CECO senior managers had just become aware of an incident that had occurred on September 18, 1992 when Unit 2 was operating at 75% power. A Nuclear Station Operator (NSO), who was a licensed reactor

operator, incorrectly positioned control rod H-1 while repositioning control rods to change localized power levels within the reactor core, and the event was concealed from CECo management. Both CECo and the NRC initiated investigations of the incident.

On September 18, 1992, the NSO erroneously moved control rod H-1 from Position 48 (fully withdrawn) to Position 36. A Qualified Nuclear Engineer (QNE) and two individuals in training to become "qualified" nuclear engineers were in the control room when the QNE recognized the NSO's error. The QNE informed the NSO of the error. The NSO failed to insert the mispositioned rod to Position 00 and continued to move other control rods at the direction of the QNE. The QNE then informed Mr. Tang Wee, the Station Control Room Engineer on duty, of the mispositioned rod. Later, Mr. Tang Wee spoke with the NSO and the three nuclear engineers and they all agreed that they would not discuss the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, a Dresden Form 14-14C was falsified, and CECo management was not informed of the incident.

The NRC licenses individuals pursuant to 10 CFR Part 55, "Operators' Licenses," to manipulate the controls of an utilization facility. The operator license requires the

individual to observe all applicable rules, regulations and orders of the Commission, including the operating procedures and other conditions specified in the facility license.

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

Dresden Operating Abnormal Procedure (DOA) 300-12, "Mispositioned Control Rod," Revision 2, dated November 1991, section D "Subsequent Operator Actions," step 2, required, in part, that if a single control rod was inserted greater than one even notch from its in-sequence position and reactor power was greater than 20%, then the mispositioned rod must be continuously inserted to position 00. Section D.5 required, in part, that the NSO record any mispositioned control rod in the Unit log book.

Dresden Administrative Procedure, (DAP) 07-29, "Reactivity Management Controls," Revision 0, section F.1.g required, in part, that the station control room engineer (SCRE) communicate to the NSO the requirements for procedural adherence.

Dresden Administrative Procedure, (DAP) 07-01, "Operations Department Organization", Section B.5.e., requires in part that the SCRE report any abnormal operating conditions to the Shift Engineer.

These procedures were not followed. Specifically, Mr. Tang Wee did not communicate to the NSO requirements for procedural adherence concerning the NSO's duty to record the mispositioning incident in the unit control room log, and did not report the mispositioning incident to the Shift Engineer. Instead, Mr. Tang Wee agreed with the NSO, the QNE and two nuclear engineers in training that they would not discuss the incident with anyone else.

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3-92-055R), I conclude that Mr. Tang Wee, along with the NSO, the QNE and two nuclear engineers in training, deliberately attempted to conceal the mispositioned control rod event by failing to document and report the incident as required by plant procedures. In furtherance of this agreement, Mr. Tang Wee deliberately caused CECO to be in violation of Dresden Technical Specification 6.2.A.1; DAP 07-29, Revision 0, Section F.1.g; and DAP 07-01, Section B.5.e, by failing to communicate to the NSO the requirement to record the mispositioned rod event in the control room log and by failing to report the event to the Shift Engineer.

Further, in a transcribed sworn statement on December 1, 1992, Mr. Tang Wee stated that he did not have a reason to make, and did not believe he made, a statement to the effect that information about the mispositioned control rod should not leave the control room. Based on the transcribed testimony of three individuals who were present during the incident that Mr. Tang Wee had made a statement to them to the effect that information about the mispositioned control rod should not leave the control room, and that all five individuals had agreed not to discuss the event with anyone else, I conclude that Mr. Tang Wee's testimony to the contrary constituted the deliberate provision of inaccurate information material to the NRC in violation of 10 CFR 55.9, "Completeness and Accuracy of Information."

III

Based on the above, Mr. Tang Wee, an employee of CEC Co at the time of the event, engaged in deliberate misconduct which caused CEC Co to be in violation of its license conditions and which constitutes a violation of 10 CFR 50.5. Further, Mr. Tang Wee, a licensed senior reactor operator at the time of the event, deliberately provided to NRC investigators information which he knew to be inaccurate in some respect material to the NRC, in violation of 10 CFR 55.9.

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Tang Wee's action in causing CECo to violate its license conditions and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed facilities and licensed individuals and to provide complete and accurate information to the NRC. Mr. Tang Wee's deliberate misconduct that caused CECo to violate Commission requirements, and his false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Tang Wee were permitted at this time to be engaged in the performance of NRC-licensed and regulated activities. Therefore, the public health, safety and interest require that Mr. Tang Wee be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Tang Wee is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities as described in Section IV, Paragraph B, below, from whom he seeks

employment in non-licensed activities in order to ensure that such employer is aware of Mr. Tang Wee's previous history. For five years from the date of the Order, Mr. Tang Wee is also required to notify the NRC of his employment by any person engaged in licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

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

- A. Mr. Tang Wee is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.
- B. Should Mr. Tang Wee seek employment in non-licensed activities with any person engaged in NRC-licensed activities in the three years from the date of this Order, Mr. Tang Wee shall provide a copy of this Order

to such person at the time Mr. Tang Wee is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

- C. For three years from the date of this Order, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities from an employer engaged in NRC-licensed activities, as described in Paragraph IV.B, above.
- D. After the three year prohibition has expired as described in Paragraphs IV.A and B, above, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, of acceptance of any employment in NRC-licensed activity for an additional two year period.

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

V

In accordance with 10 CFR 2.202, Mr. Tang Wee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Tang Wee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Tang Wee, if the answer or hearing request is by a person other than Mr. Tang Wee. If a person other than Mr. Tang Wee

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

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

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

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

ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE
EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

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

Dated at Rockville, Maryland
this 2nd day of April 1994

IA 94-035

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 12, 1994

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

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 II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

October 21, 1994

EA 94-169

Babcock and Wilcox Company
ATTN: Mr. E. O. Hooker, Senior Vice
President and Group Executive,
Government Group
Post Office Box 11165
Lynchburg, Virginia 24506-1165

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$37,500 (NRC INSPECTION REPORT NOS. 70-27/94-12, 70-27/94-15 AND
70-27/94-16)

Dear Mr. Hooker:

This refers to the Nuclear Regulatory Commission (NRC) inspections conducted by Mr. M. P. Elliott on June 1 - July 1, 1994, by the NRC Augmented Inspection Team (AIT) on July 1 - 8, 1994, and by Mr. Elliott on July 1 - August 9, 1994, at your Naval Nuclear Fuel Division, Lynchburg, Virginia. The inspections included a review of a June 28, 1994 event, involving the loss of U-235 mass control in zone 4 of the low-level dissolver in the uranium recovery operation, which resulted in nuclear criticality safety limits being exceeded. In addition, the inspections included reviews of a July 7, 1994 event, involving the failure to have adequate procedures for the maintenance of a saw, which led to a fire in the Metallurgical Lab, and a July 26, 1994 event involving the failure to follow procedures associated with two high-level dissolver trays in the uranium recovery operation. As a result of the inspections, violations of NRC requirements were identified.

The reports documenting the NRC inspections were sent to your staff by letters dated July 29, 1994, August 5, 1994, and August 29, 1994, respectively. Confirmatory Action Letters were issued to your staff on June 30 and July 28, 1994, concerning the processing of low-level and high-level scrap materials in your Uranium Recovery Facility. An enforcement conference was conducted in the NRC Region II office on September 19, 1994, to discuss the violations, their causes, and your corrective actions to preclude recurrence. A summary of this conference was sent to your staff by letter dated September 29, 1994.

Section I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) describes two violations involving: (1) two examples of the failure to conduct activities involving licensed material in accordance with established nuclear criticality safety limits and controls; and (2) two examples of the failure to adequately consider pertinent process conditions and known modes of failure in establishing these safety limits.

The violations in Section I of the enclosed Notice are of significant safety and regulatory concern because of the safety implications associated with exceeding established nuclear criticality safety limits and controls. These violations indicate that your evaluation and analysis of known modes of failure involving nuclear criticality safety controls had not been adequately strengthened despite numerous noted weaknesses. We are concerned that your continued poor performance in the area of criticality safety controls may stem from your underestimating the depth and breadth of the underlying problems.

Given your continued poor performance and that past opportunities to identify and properly correct these failures were not adequately recognized, these violations represent a continued lack of adequate management attention to nuclear criticality safety controls. 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 have been categorized in the aggregate as a Severity Level III problem.

The NRC acknowledges that the event initially was recognized and reported to management by your operations staff and that your staff took immediate corrective actions to shut down the low-level dissolver operations, investigate the event and implement limited procedural changes to control scrap and waste handling operations. In addition, your staff formed an incident review team to review the event in detail and determine appropriate corrective actions to address programmatic issues. At the enforcement conference your staff stated that corrective actions involving the low-level dissolver incident included: (1) the establishment of procedural requirements for scrap and waste generation; (2) the discontinuation of drum counting for criticality safety of scrap storage and processing; (3) the processing of scrap with net weight input limits; (4) the establishment of criteria for waste designation; (5) the validation of drum counting for waste measurement; and (6) the performance of detailed evaluations of failure modes and of integrated safety analysis modes. However, these corrective actions did not fully address the root causes as to why procedures, controls and implementation were inadequate to ensure that nuclear criticality safety limits were properly established, maintained and evaluated.

Notwithstanding these corrective actions, to emphasize the importance of management oversight of operations involving nuclear criticality safety, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$37,500 for the Severity Level III problem. The base value of a civil penalty for a Severity Level III problem is \$12,500. The escalation and mitigation factors in Section VI.B.2 of the Enforcement Policy were considered, as described below.

No mitigation was warranted for the identification factor because the event was considered self-disclosing (i.e., the loss of U-235 mass control was obvious by reviewing the results of non-destructive assay measurements) and you did not demonstrate initiative in identifying the root cause of the violations. No mitigation was warranted for the corrective action factor because, while your short-term corrective actions were adequate, the NRC is

concerned that the schedules for long-term corrective actions were not firmly in place and the corrective actions failed to fully identify the root causes. The base civil penalty was escalated 100 percent for the licensee performance factor because the violations are reflective of your poor performance in the nuclear criticality safety area, as evidenced by an escalated enforcement action (EA 93-012) issued on April 6, 1993, for seven violations involving nuclear criticality safety controls. Escalation of 100 percent was also warranted for the prior opportunity to identify factor because effective corrective action for events in March 1989 and February 1994, which revealed weaknesses in the drum counter measurement system, could have prevented the June 1994 event. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the base civil penalty has been escalated by 200 percent.

The violations described in Section II of the Notice involved: (1) three examples of the failure to prepare adequate written and approved procedures for activities involving licensed material; (2) two examples of the failure to conduct activities involving licensed material in accordance with written and approved procedures; and (3) the failure to retain required records. While these violations have been categorized at Severity Level IV, they are of concern to the NRC because they demonstrate continued inadequate guidance in your procedures and unacceptable individual performance in the area of procedural adherence. These violations, if not fully corrected, may lead to further events.

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. Further, in view of past NRC enforcement actions involving Babcock and Wilcox Company and corrective actions where you committed to perform criticality safety analyses, you should indicate specific actions you plan to take to address criticality safety analysis issues, the timeframe for such evaluations, and the basis for the timeframe if the evaluations cannot be completed within six months. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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

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

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

Sincerely,

Stewart D. Ebnetter
Regional Administrator

Docket No. 70-27
License No. SNM-42
EA 94-169

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl:
Mr. J. A. Conner, Vice President
& General Manager
Naval Nuclear Fuel Division
Post Office Box 785
Lynchburg, Virginia 24505-0785

A. F. Olsen
Licensing Officer
Babcock and Wilcox Company
Naval Nuclear Fuel Division
P. O. Box 785
Lynchburg, VA 24505-0785

Leslie P. Foldesi, Director
Bureau of Radiological Health
Division of Health Hazards Control
Department of Health
109 Governor Street, Room 916
Richmond, VA 23219

U.S. Nuclear Regulatory Commission
ATTN: NRC Resident Inspector
Mail Code 42
P. O. Box 785
Lynchburg, VA 24505-0785

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Babcock and Wilcox Company
Naval Nuclear Fuel Division
Lynchburg, Virginia

Docket No. 70-27
License No. SNM-42
EA 94-169

During NRC inspections conducted between June 1, 1994 and August 9, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violations Assessed a Civil Penalty

- A. License Condition No. S-1 of Special Nuclear Material License No. 42 (SNM-42) requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 1.2, of the application requires that activities involving Special Nuclear Material be conducted in accordance with limits and controls established by Nuclear Criticality Safety (NCS) and approved by the Change Review Board.

Section III, Paragraph 15.a, of Procedure NCS-156, "Nuclear Safety Requirements for Recovery Operations," Rev. 16, dated April 28, 1994, requires that the nuclear safety limit for the low-level dissolver hood is 350 grams U-235 per zone.

Section III, Paragraph 2.a, of Procedure NCS-257, "Nuclear Safety Requirements for Bay 12A and Bay 13A Drum Count Area," Revision 5, dated November 3, 1993, requires 55-gallon drums be restricted to a maximum of 350 grams U-235.

Section III, Paragraph 1.b, of Procedure NCS-252, "Nuclear Safety Requirements for Field Storage Area," Revision 5, dated August 9, 1993, requires that the maximum amount of U-235 per container shall not exceed 350 grams.

Contrary to the above, activities involving Special Nuclear Material were not conducted in accordance with established NCS limits and controls in that the 350 gram U-235 limits were exceeded in that:

1. On June 29, 1994, zone 4 of the low-level dissolver hood in Uranium Recovery contained 694 grams U-235.

Enclosure

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

2. Between early 1990 and June 28, 1994, 55-gallon drum No. B&W-110670, stored in the drum count area and subsequently in the field storage area, contained approximately 821 grams U-235. (01013)

- B. License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered.

Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

1. On June 7, 1990, the CRB reviewed and approved License Evaluation Request 89-155 based on a nuclear criticality safety analysis of acceptable material types, but failed to consider pertinent process conditions related to the operation of the drum counter system that were not excluded by experimental evidence or design considerations. This resulted in a failure to accurately measure quantities of U-235 in 2-liter bottles.
2. From March 1989 through November 1990, the CRB reviewed drum counter evaluations that revealed measurement problems associated with material type and container fill level, but failed to establish requirements for remeasurement of materials previously measured by the drum counter and stored at the facility. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$37,500

Enclosure

II. Violations Not Assessed a Civil Penalty

- A. License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 7.0, of the application requires that activities involving licensed material be conducted in accordance with written and approved procedures.

Section II, Paragraph 7.4, of the application requires that Radiation Work Permits (RWP's) [RWPs] be issued for non-routine activities involving licensed material which are not covered by operating procedures.

Contrary to the above, activities involving licensed material were conducted without adequately written and approved procedures, and RWPs, that provided guidance to ensure safe operations:

1. Since October 1990, activities involving measurement of U-235 in the drum counter were conducted without adequately written and approved procedures. Specifically, Procedures:
 - E41-25, "Operating Instruction for the Drum Counter," Revision 20, dated June 21, 1994;
 - E46-80, "Processing Containers in the Drum Count/Segmented Gamma Scanner Area," Revision 0, dated April 24, 1994; and
 - E61-141, "Low Level Leach Hood Operation," Revision 8, dated December 15, 1991;

did not contain adequate instruction and guidance for drum counting, and processing in the low-level dissolvers in that they lacked adequate instruction to ensure proper material identification, control and accurate analysis of U-235 content or proper material identification, control and processing based on the total net weight of material, as appropriate. Furthermore, no procedures were established for scrap material generation. This resulted in an inappropriate measurement of materials in the drum counter and an inaccurate calculation of the quantity of U-235.

2. As of May 27, 1994, activities involving the uranium recovery high-level dissolvers production area were conducted without adequately written and approved procedures in that Procedure OP-E61-130, "High Level Dissolver Data Entry," Revision 0, dated May 27, 1994, did not describe the visual warnings or alarms used in the Computer Dissolver Data Entry System or the

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responses required to be taken to correct the problem which caused such warnings or alarms. Consequently on July 26, 1994, an operator received warnings regarding tray loading limits and did not properly acknowledge or respond to the event.

3. Activities involving the disassembly, repair, or replacement of electrolytic saw were conducted without adequately written and approved RWP in that RWP 94-153 dated June 29, 1994, failed to thoroughly describe the saw maintenance work to be performed on July 7, 1994, or the appropriate fire precautions to be taken. As a consequence, on July 7, 1994, a fire occurred that caused personnel and facility contamination. (02014)

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

- B. License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 7.0, of the application requires that activities involving licensed material be conducted in accordance with written and approved procedures.

Section 18 of Operating Procedure (OP) E61-141, "Low Level Leach Hood Operation," Revision 6, dated October 11, 1990, requires the difference in total U-235 charged into a low-level dissolver zone and total U-235 removed from the zone to be calculated. For differences greater than 40 percent, the Uranium Recovery foreman shall be notified and provided the completed Form E61-62. The foreman shall notify Nuclear Material Control and Chemical Processing Supervision. Attachment A, Table I of OP E61-141, as modified by Engineering Instruction Authorization No. 464, listed 35 types of material to be processed and also designated whether the material was to be processed on the basis of 350 gram U-235, or on the basis of 175 or 350 gram net weight.

Section 8.0 of OP-E61-101, "High Level Dissolver Operations," Revision 11, dated September 28, 1993, requires the high-level dissolver operator to determine the heel (residual U-235 in tray) prior to loading a tray and to notify the foreman if the heel approaches the 500 gram limit.

Contrary to the above, the licensee failed to conduct activities in accordance with approved, written procedures in that:

1. Between January 1993 and June 28, 1994, 36 low-level dissolver batches had differences between the drum counter input values

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Notice of Violation and Proposed - 5 -
Imposition of Civil Penalty

and the output values exceeding 40 percent, and 35 of these batch discrepancies were not reported to Nuclear Material Control and Chemical Processing Supervision.

2. On July 26, 1994, an operator charged two high-level dissolver trays containing prior heel values approaching 500 grams and caused the recorded amount of U-235 in each tray to exceed 500 grams without notifying the foreman. (03014)

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

- C. License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 10.4 of the application requires the retention of records of Change Review Board actions for the longer of either two years or six months after termination of the operation.

Contrary to the above, as of June 29, 1994, records associated with License Evaluation Request (LER) 89-124, which provided the basis for a Change Review Board action on LER 89-155, approving the counting of partially-filled bottles on the drum counter (an operation that was currently being performed), were not retained and the operation had not been terminated. (04014)

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

Pursuant to the provisions of 10 CFR 2.201, Babcock and Wilcox Company, 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 as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the

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Notice of Violation and Proposed - 6 -
Imposition of Civil Penalty

Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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

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

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

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

Dated at Atlanta, Georgia
this 21st day of October 1994

Enclosure

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

February 27, 1995

EA 94-169

Babcock and Wilcox Government Group
ATTN: Mr. J. Stewart, President
Post Office Box 11165
Lynchburg, Virginia 24506-1165

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$37,500

Dear Mr. Stewart:

This refers to your two letters, both dated November 20, 1994, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated October 21, 1994. Our letter and Notice described five violations of NRC requirements identified during inspections conducted on June 1 - July 1, 1994, July 1 - 8, 1994, and July 1 - August 9, 1994, at the Naval Nuclear Fuel Division, Lynchburg, Virginia.

A civil penalty in the amount of \$37,500 was proposed to emphasize the importance of management oversight of operations which ensures that nuclear criticality safety limits are met. Management oversight includes addressing root causes to violations involving procedures, controls, and implementation.

In your responses, you protested the proposed imposition of civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, denied Violations I.B.1, I.B.2, and II.C, and disagreed with the application of the escalation and mitigation factors.

After consideration of your responses, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty that the violations occurred as stated, that a sufficient basis was not provided to change the categorization of the severity level of the violations, and that insufficient additional basis was provided which supports mitigation of the proposed civil penalty. Accordingly, we hereby serve the enclosed Order on Babcock and Wilcox Company imposing a civil monetary penalty in the amount of \$37,500. Payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. We will review the effectiveness of your corrective actions during a subsequent inspection.

Further, your responses did not provide corrective actions to Violations I.B.1, I.B.2, and II.C. As explained in the Appendix attached to the enclosed Order, the NRC has determined that the violations occurred as stated in the Notice. Therefore, pursuant to the provisions of 10 CFR 2.201, Babcock and Wilcox Company is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory

Babcock and Wilcox Government Group - 2 -

Commission, within 30 days of the date of this letter. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for Violations I.B.1, I.B.2, and II.C: (1) the corrective steps that have been taken and the results achieved, (2) the corrective steps that will be taken to avoid further violations, and (3) the date when full compliance will be achieved.

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

Sincerely,

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

Docket No. 70-27
License No. SNM-42

Enclosure: Order Imposing Civil Monetary
Penalty - \$37,500 w/Appendix

cc w/encl:
A. F. Olsen
Licensing Officer
Babcock and Wilcox Company
Naval Nuclear Fuel Division
P. O. Box 785
Lynchburg, VA 24505-0785

Leslie P. Foldesi, Director
Bureau of Radiological Health
Division of Health Hazards Control
Department of Health
109 Governor Street, Room 916
Richmond, VA 23219

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

BABCOCK AND WILCOX COMPANY)
Lynchburg, Virginia)

Docket No. 70-27
License No. SNM-42
EA 94-169

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Babcock and Wilcox Company (Licensee) is the holder of Special Nuclear Material (SNM) License No. SNM-42 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 31, 1984. The license authorizes the Licensee to possess and use Special Nuclear Material in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities were conducted on June 1 - July 1, 1994, July 1 - 8, 1994, and July 1 - August 9, 1994. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 21, 1994. 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 Violations I.A and I.B.

The Licensee responded to the Notice in two letters, both dated November 20, 1994. In its responses, the Licensee protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations

represented a Severity Level III problem, denied Violations I.B.1, I.B.2, and II.C, and disagreed with the application of the escalation and mitigation factors.

III

After consideration of the Licensee's responses 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 and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

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

The Licensee pay a civil penalty in the amount of \$37,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

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 II, 101 Marietta Street, N.W., Suite 2900, Atlanta, GA 30323.

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 set forth in Violations I.B.1 and I.B.2, as set forth in the Notice, and

- (b) Whether, on the basis of such violations and the additional violations set forth in Section I of the Notice that the Licensee admitted, 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 27th day of February 1995

APPENDIX

EVALUATIONS AND CONCLUSION

On October 21, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during NRC inspections conducted on June 1 - July 1, 1994, July 1 - 8, 1994, and July 1 - August 9, 1994. Babcock and Wilcox Naval Nuclear Fuel Division (Licensee) responded to the Notice with a reply and an answer, both dated November 20, 1994. The Licensee admitted Violations I.A.1, I.A.2, II.A, and II.B, denied Violations I.B.1, I.B.2, and II.C, protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, and disagreed with the application of the escalation and mitigation factors. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

I. Evaluation of Violations Assessed a Civil Penalty

Restatement of Violation I.B.1

License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered.

Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

1. On June 7, 1990, the CRB reviewed and approved License Evaluation Request 89-155 based on a nuclear criticality safety analysis of acceptable material types, but failed to consider pertinent process conditions related to the operation of the drum counter system that were not excluded by experimental evidence or design considerations. This resulted in a failure to accurately measure quantities of U-235 in 2-liter bottles.

Summary of Licensee's Response to Violation I.B.1

In its reply to the Notice, the Licensee denies that a violation occurred as stated. The Licensee states that its nuclear criticality safety (NCS) evaluation did consider pertinent process conditions and

known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery, and that the Nuclear Licensing Board (NLB), now CRB, did review the effect on NCS from processing materials measured by the drum counter in low-level dissolution and did ensure that appropriate safety controls were considered. The Licensee states that its Licensee Evaluation Request 89-155 was submitted, evaluated, and approved only because of the drum counter measurement problem which resulted in the low-level dissolution NCS limit being exceeded in 1989 and that the purpose of the NCS evaluation and NLB review and approval was to consider the pertinent process conditions and known modes of failure identified by the 1989 problem. The Licensee also states that the violation statement that pertinent process conditions and known modes of failure were not considered cannot be true since these were the only issues that were considered.

The Licensee further suggests that the evaluation was adequate in that the LER requested approval of processing only certain material types in low-level dissolution based on drum count measurements and only those types were approved for processing based upon the information in the LER. Further, the Licensee states that none of these material types were inaccurately measured by the drum counter subsequent to the approval, and the processing of these material types did not result in NCS limit violations.

The Licensee states that the scope of the LER was the use of drum counter measurements to comply with NCS limits for low-level dissolution and that no restraints were placed on the measurement of materials when the LER was approved; rather, restraints were placed only on the use of the measurements. The Licensee states that restraints on measuring materials by drum counting would be inappropriate. The Licensee adds that the primary purpose of the drum counter is to measure materials for material control and accountability and that the accuracy of the drum counter measurements is not a safety issue unless the measurements are used to meet safety limits. The Licensee adds that the NLB appropriately prohibited the use of the measurements of certain material types to meet safety limits for low-level dissolution, but also appropriately did not prohibit the measurement of any materials using the drum counter.

NRC Evaluation of Licensee's Response to Violation I.B.1

The NRC does not agree with the Licensee's statements that the Licensee considered pertinent process conditions and known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery and that the NLB reviewed the effect on NCS of the approval of processing materials measured by the drum counter in low-level dissolution. The Licensee was presented with a known mode of failure regarding a system that was used to demonstrate compliance with NCS limits. The known mode of failure was that the drum counter measurements could underestimate the amount of U-235 in a container.

The Licensee failed to consider pertinent process conditions such as scrap/waste generation, packaging, labeling, and storage that could affect the drum counter system's U-235 measurement accuracy and, therefore, did not ensure that pertinent and appropriate operating safety controls were considered to prevent the known failure. Thus, the review and approval of LER 89-155 was not considered adequate in establishing operating NCS controls or limits.

With respect to the Licensee's statement regarding the adequacy of its review of LER 89-155, the NRC notes that the review of the specific items in the single LER as presented may have been adequate for the very narrow and limited conditions of the LER presented; however, the license requires the Licensee to consider pertinent process conditions and known modes of failure in establishing NCS safety controls and limits and the Licensee failed to consider such conditions and known modes of failure.

The NRC agrees with the Licensee's statement that the primary purpose of using the drum counter is to measure materials for material control and accountability. However, in this case the Licensee was relying on the drum counter measurements to ensure that NCS limits were not exceeded. Given the nature of the Licensee's use of the measurements, the Licensee did fail to consider all failure modes that were not specifically excluded by experimental evidence or design considerations because, despite the Licensee's knowledge that drum counter measurements were inaccurate, such measurements were used for estimating quantities of U-235 in 2-liter bottles.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

Restatement of Violation I.B.2

License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered.

Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

2. From March 1989 through November 1990, the CRB reviewed drum counter evaluations that revealed measurement problems associated with material type and container fill level, but failed to establish requirements for remeasurement of materials previously measured by the drum counter and stored at the facility.

Summary of Licensee's Response to Violation I.B.2

In its reply to the Notice, the Licensee does not agree that this violation relates to the stated requirements. The Licensee further states that the need for remeasurement of materials in 1990 was neither a part of equipment design or the establishment of safety limits nor a part of the consideration of safety controls for low-level dissolution. The Licensee further states that the NLB is chartered to review and approve new or modified facilities, equipment, and processes and that it is not chartered to investigate safety problems or require actions to resolve safety problems. The Licensee maintains that the review and approval of changes to the low-level dissolution process did not impact the safety of material storage and, therefore, the need for remeasurement of material was not within the charter of the NLB.

The Licensee states that no information was presented to the NLB which indicated a need for remeasurement of scrap materials in storage. The Licensee states that the materials which were in storage and had not been acceptably measured were never identified during the evaluation, review, and approval process, and, therefore, there appeared to be no need for remeasurement.

The Licensee acknowledges that there were deficiencies related to the problems discussed, including the inaccurate measurements. However, the Licensee indicates that these deficiencies did not constitute the violation as stated.

NRC Evaluation of Licensee's Response to Violation I.B.2

The Licensee appears to take the wording of the violation out of context in that the Licensee has argued that the NLB is only responsible for considering information contained in LERs. The NLB, or another body of the Licensee's organization, should have established requirements for remeasurement of materials previously measured by the drum counter and stored at the facility. The Licensee's argument further heightens the NRC's concern as to whether the Licensee has an oversight organization that is charged with this responsibility. In addition, the argument points out that such narrow views are, in part, the reason for the Licensee's continued NCS problems (i.e., exceeding NCS limits). The license requires the Licensee to review the effect on NCS of new and revised processes involving special nuclear material (SNM) and to ensure

that appropriate safety controls are considered.

During a review of revised drum counting processes, the NLB was presented with evidence that demonstrated problems existed which were associated with drum counter measurement accuracy. The NLB was, therefore, required to review the effect on NCS of items or processes that were using drum counter measurement results to demonstrate compliance with NCS limits. Such a review should have included drum counter measurement results of materials stored in 55-gallon drums used to demonstrate compliance with the NCS limit of 350 grams of U-235 per drum.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

II. Evaluation of Violation not assessed a Civil Penalty

Restatement of Violation II.C

License Condition No. S-1 of SNM-42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 10.4 of the application requires the retention of records of Change Review Board (CRB) actions for the longer of either two years or six months after termination of the operation.

Contrary to the above, as of June 29, 1994, records associated with License Evaluation Request (LER) 89-124, which provided the basis for a CRB action on LER 89-155, approving the counting of partially-filled bottles on the drum counter (an operation that was currently being performed), were not retained and the operation had not been terminated.

Summary of Licensee's Response to Violation II.C

In its reply, the Licensee denies that the violation occurred as stated. The Licensee states that the NLB (now CRB) took no action with regard to LER 89-124 because it was withdrawn and no information associated with LER 89-124 formed a basis for any NLB action on LER 89-155.

NRC Evaluation of Licensee's Response to Violation II.C

The Licensee's license requires the retention of records of NLB actions. The LER 89-155 file contains a document which reads: "Subject: Low-Level Dissolving of Partial Containers, Reference: LER 89-124." This document states that the subject LER contained a description of all types of material normally processed in the low-level dissolvers and the means used to ensure nuclear safety while processing the various types of material. The document also states: "After a thorough review of all the material presented in the LER [89-124] it was concluded [emphasis

added] by the Nuclear Licensing Board that processing of partial containers was not the main area of concern." Therefore, the NLB did consider information from LER 89-124 in its review of LER 89-155. However, the LER 89-155 file does not contain any of the material that was thoroughly reviewed and used as the basis for the NLB to conclude that processing of partial bottles was not the main area of concern in the approval of LER 89-155.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

III. Summary of Licensee's Request for Mitigation

In its answer to the Notice, the Licensee states that a civil penalty was proposed based on Violations I.A and I.B constituting, in the aggregate, a Severity Level III problem. The Licensee argues that since Violation I.B is not a violation, only Violation I.A remains and no aggregation can occur; therefore, there is no basis for a civil penalty. The Licensee maintains that even if Violation I.B were a violation, sufficient basis does not exist for a civil penalty and that the statements in Violation I.B, if accurate, would be causes of Violation I.A and should be written as part of Violation I.A. In addition, the Licensee believes aggregating a violation which may have occurred in 1990 with one which occurred in 1994 is inappropriate.

As to certain statements made in the Notice, the Licensee disagrees that there have been many examples of inadequate evaluations relating to known modes of failure, that it has had continued poor performance in the area of NCS, and that extensive management attention has not been directed toward identifying and correcting NCS problems. The Licensee indicates that the issues for which the civil penalty is being proposed were primarily caused by problems which predate most of its efforts and that it is applying significant attention and resources to strengthen its NCS program.

With respect to the application of escalation and mitigation factors the Licensee states that Violation I.A was not a self-disclosing event because if the operators had not compared the output values from the dissolvers to the mass limit and reported the limit violation, Violation I.A would not have been known since there was no requirement to make such comparison. Further, the Licensee requests full mitigation because it showed enormous initiative in identifying the root causes, contrary to the NRC's Notice, which stated that the Licensee did not demonstrate initiative in identifying the root causes of the Violations I.A and I.B, and because it developed long-term corrective actions in a timely manner. The Licensee also states that it suspended or severely restricted activities involving scrap and waste to prevent recurrence. The Licensee states that the September 23, 1994 report to the NRC addressed in detail why procedures, controls, and implementation were inadequate and did address corrective actions for the underlying problems revealed by the event. Additional information regarding other

causes and corrective actions was provided to the NRC on November 16, 1994. Thus, based on all of its corrective actions, the Licensee indicates that a civil penalty is unwarranted. The Licensee also states that escalation of 100 percent for prior opportunity to identify is not warranted since it demonstrated that the February 1994 event did not provide opportunities for identification and that the March 1989 problem provided limited opportunities for this identification.

NRC Evaluation of Licensee's Request for Mitigation

With respect to the Licensee's argument that aggregating Violations I.A and I.B is inappropriate, the NRC concluded, as described above, that Violation I.B occurred as stated. The NRC determined that Violations I.A and I.B were related in that they have the same fundamental underlying cause and similar programmatic deficiencies, namely, the lack of management attention to NCS controls. Violation I.A involved exceeding a NCS limit. Violation I.B was issued for failure to consider process conditions and known modes of failure in the NCS analysis. These are two different issues in NCS controls and two different license requirements. Therefore, the NRC concludes both that aggregating Violations I.A and I.B as a Severity Level III was appropriate regardless of the time period between the two violations and that an escalated enforcement action was warranted.

With regard to the Licensee's disagreement with NRC statements, the NRC notes that there are 17 documented Licensee violations of NRC requirements involving NCS controls over the past two years. Despite these noted numerous weaknesses, the Licensee's NCS evaluations and analyses have not been adequately strengthened as evidenced by the failures described in NRC inspection reports 70-27/94-12, 94-15, and 94-16. These violations and other weaknesses clearly represent continued poor performance and inadequate management attention because the Licensee has not sufficiently improved its performance over the past two years to prevent recurring problems in the area of NCS. Furthermore, the Licensee's argument regarding the function of the NLB is narrow and does not support the Licensee's statements that extensive management attention has been placed in this area to ensure identification and correction of NCS problems. While the NRC acknowledges that some management attention has been directed toward identifying and correcting NCS problems, Licensee management must ensure that proper NCS controls and oversight are in place and are adhered to, and that NCS problems are thoroughly investigated to ensure that effective corrective actions are in place to prevent such problems from recurring or leading to other problems.

The NRC neither escalated nor mitigated for the identification factor because while the NRC recognizes that the Licensee identified Violation I.A, the Licensee should note that the NRC identified Violation I.B. In addition, Section VI of the Enforcement Policy states, in part, that a "'self-disclosing' event as used in this policy statement means an event that is readily obvious by human observation . . ." The Licensee's

Chemical Processing operating procedures required operators to: compare the amount of U-235 added to the low-level dissolvers with the amount removed, determine if the difference between the two exceeded 40 percent and, if so, report such excessive differences to management. Also, the Licensee's NCS limits required the amount of U-235 in each low-level dissolver zone be limited to 350 grams. Because the license requires procedures and postings to be followed and because doing so made the 350 gram limit violation readily obvious to human observation, the event was correctly categorized as self-disclosing.

Furthermore, Section VI of the Enforcement Policy also states, in part, that "The base civil penalty may also be mitigated up to 25% when the licensee identifies a violation resulting from a self-disclosing event where the licensee demonstrates initiative in identifying the root cause of the violation." While the NRC acknowledged that the Licensee identified inadequacies in procedures, controls, and implementation systems, the NRC maintains that the Licensee did not demonstrate initiative in identifying the root cause of the violations because its analysis did not ask or answer why these procedures, controls, and systems were inadequate and what should be done to prevent such recurrence. Specifically, NRC involvement was needed before acceptable corrective action was taken in that it was not until NRC requested and conducted a management meeting with the Licensee on August 3, 1994, that the Licensee agreed to evaluate the series of incidents that had been occurring in an attempt to uncover the underlying generic root cause(s).

With regard to the corrective action factor, the NRC acknowledged that the Licensee took some immediate corrective actions to stop operations of the low-level dissolver and formed an incident review team to review the event in detail and determine appropriate corrective actions. The NRC did give the Licensee credit for these corrective actions in that escalation for this factor was not applied. However, the NRC affirms that full mitigation for this factor is not warranted because: (1) the Licensee did not demonstrate initiative in identifying the root cause of the violations because NRC involvement was needed before adequate actions were taken; (2) the Licensee's initial long term corrective actions were not comprehensive; and (3) the Licensee's development of long term corrective actions was not timely.

As noted earlier, it was not until NRC requested and conducted a management meeting that the Licensee agreed to evaluate the series of incidents in an attempt to identify the root cause. The results of that evaluation were discussed in a management meeting on November 16, 1994, and were submitted by the Licensee on November 20, 1994, as an attachment to the Licensee's reply to the Notice. Furthermore, on July 8, 1994, as the NRC's Augmented Inspection Team discussed its findings with Licensee management, the Licensee was requested to submit a copy of its investigation team findings, including corrective actions, to the NRC. The Licensee stated that the report would be completed and made available to the NRC on or about August 5, 1994. However, the report was not completed and made available to the NRC until

September 23, 1994, after the enforcement conference. During the enforcement conference, NRC asked the Licensee for a time schedule for implementing the corrective actions discussed by the Licensee at the conference. More than two months after the low-level dissolver event, the Licensee did not have long-term corrective action time schedules firmly in place.

Regarding the prior opportunity to identify factor, the NRC believes that effective corrective action, if taken, for events occurring in March 1989 and February 1994, which revealed weaknesses in the drum counter measurement system, could have prevented the June 1994 event. Specifically, if the Licensee had adequately reviewed the effect on NCS of items or processes that were using drum counter measurement results and implemented effective corrective actions, the June 1994 event could have been prevented. Following the March 1989 and February 1994 events, a formal incident review and root cause analysis were not performed and corrective actions were not taken. The NRC expects licensees to learn from their mistakes and implement adequate and effective corrective actions to prevent recurrence. In its answer to the Notice, the Licensee acknowledges that its corrective actions would have prevented the low-level dissolution violation had they been followed.

The NRC concludes that the escalation and mitigation factors were applied appropriately and in accordance with the Enforcement Policy.

NRC Conclusion

The NRC concludes that Violations I.B.1, I.B.2, and II.C occurred as stated, that Violations I.A and I.B were appropriately categorized as a Severity Level III problem, and that an adequate basis for mitigation of the proposed civil penalty was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of \$37,500 should be imposed by Order.

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

October 17, 1994

Docket No. 030-15139
License No. 37-04594-11
EA No. 94-167

Dr. Richard Breslin
President
Drexel University
32nd and Chestnut Streets
Philadelphia, Pennsylvania 19104

Dear Dr. Breslin:

Subject: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$6,250
(NRC Inspection No. 030-15139/94-001)

This letter refers to the NRC inspection conducted on July 22, July 27 and August 1, 1994, at Drexel University, Philadelphia, Pennsylvania, of activities authorized by NRC License No. 37-04594-11. The inspection report was sent to you on September 1, 1994. Based on the results of the inspection and subsequent discussions, 12 apparent violations of NRC requirements were identified, five of which were repetitive of violations identified during a previous NRC inspection at your facility in April 1991. On September 9, 1994, an open enforcement conference was conducted in the Region I office with members of management and staff of Drexel University to discuss the apparent violations, their causes and your corrective actions. A copy of the enforcement conference report is enclosed.

Two of the apparent violations are being withdrawn, for the reasons provided in the enforcement conference report. The ten violations that are being cited are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) (Enclosure 1). The violations involve: (1) failure of the Radiation Safety Officer (RSO) to periodically review the terms and conditions of the license; (2) failure of the Radiation Safety Committee (RSC) to meet quarterly (this is a repeat violation); (3) failure by radiation safety staff to adequately evaluate the type and amount of radioactive materials at Drexel University; (4) failure to provide radiation safety training to staff; (5) failure of the radiation safety staff to perform quarterly surveys of laboratories (this is a repeat violation); (6) failure of authorized users to perform weekly wipe tests of laboratories and to maintain records of measurements of radiation level surveys (this is a repeat violation); (7) failure to perform leak tests of sealed sources; (8) failure to perform physical inventories of sealed sources (this is a repeat violation); (9) failure to calibrate survey instruments (this is a repeat violation); and (10) failure to properly post or label rooms or containers in which radioactive materials were stored.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

These violations are particularly disturbing since a total of 12 violations were identified during the last routine NRC inspection in 1991. However, adequate corrective actions were not taken to correct the violations and prevent recurrence, as evidenced by the fact that five of the violations identified during the recent inspection were repetitive of the violations identified in 1991. The violations collectively demonstrate that a significant breakdown in the control of licensed activities existed at your facility. Furthermore, neither the RSO nor the RSC at your facility identified the violations, notwithstanding the number and nature of these violations and the fact that some of them were longstanding and/or repetitive.

The NRC license issued to Drexel University entrusts responsibility for radiation safety to the management of the university; therefore, the NRC expects effective oversight of its licensed programs. Incumbent upon each NRC licensee is the responsibility of management in general, and the RSC and RSO in particular, to protect the public health and safety by ensuring that all requirements of the NRC license are met and any potential violations of NRC requirements are identified and expeditiously corrected. Given this lack of management attention towards licensed responsibilities, the violations are classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C. The violations are set forth in the enclosed Notice.

The NRC issued a Confirmatory Action Letter (No. 1-94-011) to you on August 3, 1994, which confirmed your commitment to effect certain improvements at your facility. The NRC also recognizes that actions were taken or planned to correct the violations and effect improvements in the control and implementation of the radiation safety program. These actions, which were described at the enforcement conference, included: appointment of an Assistant RSO who will oversee radiation safety activities for the Biosciences Department; establishment of a new radioactive materials storage facility; conduct of a campus wide inventory of radioactive material, and computerization of same; establishing a schedule for RSC meetings for 1994 and 1995; and conduct of a management audit of the radiation safety program.

Notwithstanding those actions, to emphasize (1) the importance of aggressive management oversight of the radiation safety program, so as to ensure that licensed activities are conducted safely and in accordance with requirements, and violations, when they exist, are promptly identified and corrected, and (2) the need for ensuring that your corrective actions are long-lasting, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$6,250 for the violations set forth in the enclosed Notice.

The base civil penalty amount for a Severity Level III violation or problem is \$2,500. The base civil penalty amount has been (1) increased by 50% because the violations were identified by the NRC, (2) not adjusted based on your corrective actions, since those actions, although acceptable, were not considered sufficiently prompt and comprehensive to warrant mitigation because corrective actions including a full inventory and characterization of materials at the campus were still in the planning stages and not completed at the time of the

enforcement conference; and (3) increased by 100% based on your overall performance given the 12 violations during the past inspection in 1991, the fact that five of the violations identified during the recent 1994 inspection were repetitive to violations identified in 1991, and the recent violations demonstrates a substantial decline in performance. Accordingly, on balance, the civil penalty for this Severity Level III problem is escalated by 150% to \$6,250. The other escalation/mitigation factors were considered and no further adjustment is warranted.

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

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

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

Sincerely,

Thomas T. Martin
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition
of Civil Penalty
2. Enforcement Conference Report

ENCLOSURE 1

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Drexel University
Philadelphia, Pennsylvania 19104

Docket No. 030-15139
License No. 37-04594-11
EA No. 94-167

During an NRC inspection conducted between July 22 and August 1, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

A. Condition 21 of License No. 37-04594-11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

1. Item 10.2 of the application requires that the Radiation Safety Committee meet quarterly.

Contrary to the above, the Radiation Safety Committee (RSC) did not meet quarterly. Specifically, the RSC did not meet during the fourth quarter of 1992, third and fourth quarters of 1993, and first and second quarters of 1994. (IFS 01013)

This is a repeat violation.

2. Item 10.4.1(d) of the application requires that students, laboratory technicians and physical plant workmen including housekeeping and security, all receive formal training workshops concerning laboratory hazards including radioactive material.

Contrary to the above, from January 1992 to August 1994, certain personnel working in restricted areas, including students, laboratory technicians and physical plant workmen (housekeeping and security), did not receive formal training workshops concerning laboratory hazards including radioactive material. Specifically, formal training workshops were not held for housekeeping, even though housekeeping staff entered restricted areas. In addition, training sessions held for graduate students were inadequate in that several students interviewed were not aware of appropriate procedures for using survey instruments or for cleaning up contamination. In addition, the Assistant Radiation Safety Officer (RSO) was not aware of the meaning of radioactive labels on radioactive materials packages which he is required to survey. (IFS 01023)

3. Item 10.4.2(c) of the application requires that surveys of laboratories be conducted by the RSO or his assistant quarterly, and that surveys include measurement of radiation levels with a survey meter and wipe tests to determine contamination levels, and that permanent records be kept of survey results.

Contrary to the above, (1) surveys of laboratories were not conducted by the RSO or his assistant during the second quarter of 1994, (2) surveys that were conducted from January 1993 to March 1994 did not include wipe tests of laboratories to determine contamination levels, and (3) permanent records were not kept of survey results of measurements of radiation levels conducted from January 1993 to March 1994. (IFS 01033)

This is a repeat violation.

4. Item 10.4.2(c) requires the surveys, including measurements of radiation levels with a survey meter and wipe tests to determine contamination levels, be conducted by each user weekly, and that permanent records be kept of survey results.

Contrary to the above, from January 1993 to August 1994, surveys, including measurements of radiation levels with a survey meter and wipe tests to determine contamination levels, were not conducted by each user weekly, and permanent records of survey results were not maintained. Specifically, surveys of laboratories by users did not include wipe tests, and permanent records of measurements of radiation levels were not maintained in some of the laboratories in the Biosciences Department. (IFS 01043)

This is a repeat violation.

5. Item 10.3.1(n) requires that the RSO ensure calibration of radiation monitoring instruments.

Contrary to the above, the RSO did not ensure calibration of monitoring instruments. Specifically, the survey instrument used by the Assistant RSO from January 1994 to August 1994 had not been calibrated. In addition, numerous survey instruments used by laboratory personnel had not been calibrated since 1991. (IFS 01053)

This is a repeat violation.

6. Item 10.3.1(j) requires that the RSO conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Contrary to the above, between January 1992 and July 1994, the RSO did not conduct periodic reviews of the terms and conditions of the license, as evidenced by the fact that the RSO was unaware of the requirements specified in the licensee's application dated April 1, 1991. (IFS 01063)

- B. Condition 14 of the license requires that sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material were not tested for leakage and/or contamination at intervals not to exceed 6 months and no other intervals were specified by the certificate of registration referred to in 10 CFR 32.210. Specifically, a cesium-137 and cobalt-60 source with activities greater than 100 microcuries of gamma emitting radioactive material per source and in use by the licensee, were not tested for leakage and/or contamination during the period August 1991 to August 1994, an interval in excess of six months. (IFS 01073)

- C. Condition 17 of the license requires that physical inventories be conducted every six months to account for all sealed sources and devices containing licensed material received and possessed under the license.

Contrary to the above, physical inventories were not conducted every six months to account for all sealed sources and devices containing licensed material received and possessed under the license. Specifically, physical inventories were not conducted of sealed sources in the licensee's possession during the period January 1991 to August 1994, an interval in excess of six months. (IFS 01083)

This is a repeat violation.

- D. 10 CFR 20.1904 requires that each container of licensed material bear a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label must also provide sufficient information to permit individuals handling or using the containers, working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

Contrary to the above, each container of licensed material did not bear a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." In addition, containers were not labelled to provide sufficient information to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures. Specifically, a number of containers in Building No. 50 were not labelled at all or incorrectly labelled as to their contents. (IFS 01093)

- E. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present. Pursuant to 10 CFR 20.1003, survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, the licensee did not make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present. Specifically, prior to August 1, 1994, the licensee did not perform an adequate evaluation of radioactive materials/waste on hand, including the types and quantity of waste in Building No. 50, in that the nuclides and quantity of radioactive materials in Building 50 had not been inventoried. (IFS 01103)

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

Civil Penalty - \$6,250

Pursuant to the provisions of 10 CFR 2.201, Drexel University (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 a civil penalty.

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

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

Dated at King of Prussia, Pennsylvania
this 17th day of October 1994

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

February 8, 1995

EA 94-167

Dr. Richard Breslin, President
Drexel University
32nd and Chestnut Streets
Philadelphia, Pennsylvania 19104

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$5,000

Dear Dr. Breslin:

This refers to your two letters, both dated November 14, 1994, and your letter dated January 17, 1995, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter, dated October 17, 1994. Our letter and Notice described several violations that were classified collectively as a Severity Level III problem. A civil penalty in the amount of \$6,250 was proposed for the violations to emphasize (1) the importance of aggressive management oversight of the radiation safety program, so as to ensure that licensed activities are conducted safely and in accordance with requirements, and violations, when they exist, are promptly identified and corrected, and (2) the need for ensuring that your corrective actions are long-lasting.

In your responses, you deny Violations A.2 and A.6; deny in part Violation B; admit the remaining violations (A.1, A.3, A.4, A.5, C, D, and E); disagree with the classification of the violations collectively at Severity Level III; and request mitigation of the penalty for the reasons summarized in the enclosed Appendix.

After consideration of your responses, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing A Civil Monetary Penalty, that an adequate basis was not provided for withdrawal of any of the violations, although you did provide a basis for retraction of one of the examples of Violation B, and that the categorization of the violations as a Severity Level III problem is appropriate. However, upon reconsideration of your corrective actions based on the information provided in your response, the NRC agrees that your corrective actions were prompt and comprehensive, and therefore, provide a basis for partial mitigation of the civil penalty. After applying full mitigation for the "corrective action" factor, the NRC has concluded that the penalty should be reduced from \$6,250 to \$5,000. Accordingly, we hereby serve the enclosed Order on Drexel University imposing a civil monetary penalty in the amount of \$5,000. As provided in Section IV of the enclosed Order, payment should be made within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

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

Docket No. 030-15139
License No. 37-04594-11

Enclosures:
As Stated

cc w/encls:
PUBLIC
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

DREXEL UNIVERSITY
Philadelphia, Pennsylvania

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Docket No. 030-15139
License No. 37-04594-11
EA No. 94-167

ORDER IMPOSING A CIVIL MONETARY PENALTY

I

Drexel University (Licensee) is the holder of Byproduct Materials License No. 37-04594-11 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on October 31, 1979. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at its facility in Philadelphia, Pennsylvania.

II

An inspection of the Licensee's activities was conducted on July 22, July 27, and August 1, 1994, at the Licensee's facility located in Philadelphia, Pennsylvania. The result of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 17, 1994. The Notice states the nature of the violations, the provisions of the NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters, both dated November 14, 1994, and a letter dated January 17, 1995. In its responses, the Licensee denies Violations A.2 and A.6; denies in part Violation B; admits Violations A.1, A.3,

A.4, A.5, C, D, and E; disagrees with the classification of the violations collectively at Severity Level III; and requests mitigation of the penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that: (1) Violation B should be modified to withdraw one of the examples; 2) the remaining violations occurred as stated in the Notice; (3) the violations were appropriately classified collectively at Severity Level III; (4) partial mitigation of the penalty should be allowed based on the Licensee's corrective actions; and (5) a penalty of \$5,000 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 \$5,000 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

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

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

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

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violations A.2 and A.6 of the Notice referenced in Section II above, and Violation B as amended in the Appendix to this Order; and

- (b) whether on the basis of such violations, and the additional violations set forth in the Notice of Violation that the Licensee admitted, 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 8th day of February 1995

APPENDIX

EVALUATIONS AND CONCLUSION

On October 17, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Drexel University (Licensee) responded to the Notice in two letters, both dated November 14, 1994, and a letter dated January 17, 1995. In its responses, the Licensee denies Violations A.2 and A.6; denies in part Violation B; admits the remaining violations (A.1, A.3, A.4, A.5, C, D, and E); disagrees with the classification of the violations collectively as a Severity Level III Problem; and requests mitigation of the penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation A.2

Condition 21 of License No. 37-04594-11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

Item 10.4.1(d) of the application requires that students, laboratory technicians and physical plant workmen including housekeeping and security, all receive formal training workshops concerning laboratory hazards including radioactive material.

Contrary to the above, from January 1992 to August 1994, certain personnel working in restricted areas, including students, laboratory technicians and physical plant workmen (housekeeping and security), did not receive formal training workshops concerning laboratory hazards including radioactive material. Specifically, formal training workshops were not held for housekeeping, even though housekeeping staff entered restricted areas. In addition, training sessions held for graduate students were inadequate in that several students interviewed were not aware of appropriate procedures for using survey instruments or for cleaning up contamination. In addition, the Assistant Radiation Safety Officer (RSO) was not aware of the meaning of radioactive labels on radioactive materials packages which he is required to survey.

Summary of Licensee's Response to Violation A.2

The Licensee denies violation A.2, stating that training is held for students and staff who use radioactive materials (RAM), and that training takes the form of both formal instruction, as well as one-on-one between faculty and student. The licensee also states that if the students join a laboratory at random times during the year, the students receive instructions and training on the requisite laboratory hazards, and training records are maintained. The Licensee does not challenge the inspector's finding that isolated incidents may have been uncovered revealing possible incomplete knowledge on the part of a student. However, the Licensee contends that this does not represent a failure to provide radiation safety training to the staff.

The Licensee also states that the NRC was informed, at the time of the enforcement conference on September 9, 1994, that neither housekeeping staff nor physical plant workmen are permitted to enter restricted areas unescorted. The licensee further indicates that the laboratories are locked when unoccupied and are removed from the building master key system, thereby requiring escorted entry if that

should become necessary. The Licensee notes that it confirmed with the manager of the housekeeping staff that the staff are given explicit instructions that they do not have unescorted access, and when escorted, they are not to handle any trash or other containers labeled with signs or other indications of hazardous materials. The Licensee states that there is no evidence that housekeeping staff or other workmen untrained in radiation safety entered restricted areas unescorted.

The Licensee further states that at the enforcement conference on September 9, 1994, the University representative informed the NRC that a new Assistant Radiation Safety Officer (ARSO), with appropriate technical background, had been appointed. Furthermore, arrangements had already been made for the new ARSO to receive a week of full-time training and education on the fundamentals in an accredited short course on radiation safety at the end of September, and that the ARSO is receiving additional on-campus training through a graduate course given by a certified health physicist.

NRC Evaluation of Licensee's Response to Violation A.2

The Licensee's training program as described in Section 10.4.1(d) ("Instructions for personnel working in restricted areas") of its License application, requires that students, laboratory technicians and physical plant workmen, including housekeeping and security, all receive formal training workshops concerning laboratory hazards including radioactive materials. The Licensee's application does not identify any exceptions concerning whether an individual is escorted or not. The inspector questioned several students and found that the students did not know how to use a survey meter or what to do in the event of a spill or accident. In fact, the RSO stated to the inspector that no formal training had been provided to housekeeping and security staffs from January 1992 to August 1994. In addition, the inspector learned that ARSO had not been instructed on the meaning of various radioactive package labels.

These findings indicate that adequate training was not provided to some of the Licensee's staff. Some of the identified examples involved users of phosphorus-32, which, if mishandled, could result in a significant contamination event. Although the Licensee may have conducted some training, the Licensee: (1) did not assure adequate training of all individuals covered by Item 10.4.1(d) of the license application as referenced in License Condition 21; and (2) did not verify that those who were trained understood the training that had been provided. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

Restatement of Violation A.6

Condition 21 of License No. 37-04594-11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

Item 10.3.1(j) requires that the RSO conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Contrary to the above, between January 1992 and July 1994, the RSO did not conduct periodic reviews of the terms and conditions of the license, as evidenced by the fact that the RSO was unaware of the requirements specified in the licensee's application dated April 1, 1991.

Summary of Licensee's Response to Violation A.6

The Licensee denies the violation and indicates that there were differences of interpretation between the RSO and NRC, and that those differences arose as a result of the process of the Licensee proposing procedures in amendment applications and the NRC formally incorporating those procedures into the license by amendment. The Licensee also states that the RSO and RSC have thoroughly reviewed the license, including the basic document and all letters of additional commitments. The Licensee indicates that, based upon its review and discussion with the NRC Regional Office, it is the Licensee's intent to apply for modifications to the license which will meet the Licensee's actual and limited need. The Licensee also states that upon satisfactory resolution of the current issues with the NRC, it expects to request modification to a more limited license and to delete some of the current commitments which are not reasonable for the circumstances of this Licensee's use of radioactive materials.

NRC Evaluation of Licensee's Response to Violation A.6

License Condition 21 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in certain specified applications and letters submitted by the Licensee. The requirement is clear and leaves no room for differences of interpretation. As required by License Condition 21, application dated April 1, 1991, Item 10.3.1(j), the RSO is required to conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Although the Licensee describes certain actions taken by the RSO and RSC in reviewing the license, it appears that the Licensee is referring to actions taken subsequent to the inspection. As documented in the inspection report, the RSO was not aware of the requirements for leak testing and physical inventory of sealed sources, and was unfamiliar with area survey requirements for authorized users, all of which are required by conditions of the license. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

Restatement of Violation B

Condition 14 of the license requires that sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material were not tested for leakage and/or contamination at intervals not to exceed 6 months and no other intervals were specified by the certificate of registration referred to in 10 CFR 32.210. Specifically, a cesium-137 and cobalt-60 source

with activities greater than 100 microcuries of gamma emitting radioactive material per source and in use by the licensee, were not tested for leakage and/or contamination during the period August 1991 to August 1994, an interval in excess of six months.

Summary of Licensee's Response to Violation B

The Licensee states that the only sealed source not in storage and requiring leak testing at the time of the NRC inspection was a 1.06 mCi cesium-137 source used once or twice a year in the Physics and Atmospheric Sciences Department. The Licensee also states that the cobalt-60 source, having decayed to 64 μ Ci, does not require leak testing and, for more than three years, has not required it. In addition, the Licensee notes that subsequent to the NRC inspection, the Cs-137 source was assayed on September 14, 1994, and again in October 1994 and leak tested with no evidence of any leakage found.

NRC Evaluation of Licensee's Response to Violation B

Since the Licensee acknowledges that leak-testing did not occur with respect to the cesium-137 source, the NRC concludes that this aspect of the violation occurred as stated in the Notice. Based on the additional information which has now been provided by the Licensee, but which was unavailable at the time of the inspection, the aspect of the violation regarding the cobalt-60 source is hereby withdrawn. The withdrawal of one example of a violation does not change the fact that the violation occurred, nor does it change the amount of the civil penalty assessed for the violations in this case.

Summary of Licensee's Response Regarding Severity Level

The Licensee states that it does not concur with the NRC classification of the violations collectively as a Severity Level III Problem, contending that in a number of instances, the NRC extrapolated a single, or even several replications of the identical, adverse findings among many activities and personnel, to suggest widespread disregard for either its radiation safety program or its responsibility in its oversight and management. The Licensee contends that it takes the protection of public health and safety as a serious responsibility, and to suggest otherwise from the violations cited by the NRC is a significant inaccuracy.

The Licensee also states that it finds it disturbing that the October 17, 1994, letter transmitting the civil penalty suggests that the NRC had an expectation that the corrective actions were to be completed prior to the enforcement conference, and not having them completed was a factor in classifying the violations at Severity Level III.

The Licensee further states that since the 1991 inspection, those involved at the time in the Radiation Safety Program leadership and management are no longer with the Licensee and significant change has taken place. The Licensee also states that the Provost and Senior Vice President for Academic Affairs, Senior Vice President for Administration and Finance, Vice Provost for Research and Graduate Studies, Radiation Safety Officer, and the New Chief Executive Officer of the University are all very seriously committed to a Radiation Safety Program which is in complete accord with NRC requirements.

NRC Evaluation of the Licensee's Response Regarding Severity Level

The violations identified during the 1994 inspection indicated a lack of management attention to the radiation safety program, as described in the October 17, 1994 letter transmitting the Notice. This NRC determination of a lack of adequate management attention was based on the fact that ten violations of NRC requirements were identified and cited, and more importantly, five of those violations were repetitive. If appropriate management attention had been provided, appropriate corrective actions would have been taken after the previous NRC findings in 1991, and these violations would not have recurred, or would have been promptly identified and corrected by current management. That did not happen. Rather, the violations were identified by the NRC.

The NRC did not suggest, in its letter, that there was widespread disregard for the program. If that had been the case, the NRC would have proposed a more severe sanction. However, given the number of violations, the repetitive nature of some of them, and the fact that the violations would have been identified by the RSO or RSC if adequate management attention was provided to the program, the NRC concludes that the violations were appropriately categorized collectively at Severity Level III.

The Licensee has confused the failure to take lasting corrective action to prevent the recurrence of the violations identified during the 1991 inspection with the issue of corrective actions for the violations identified during the July 1994 inspection. The latter issue was not a basis for considering the 1994 violations collectively as a Severity Level III problem; however, it was considered in determining the amount of the civil penalty for this Severity level III problem.

Summary of Licensee's Request for Mitigation

The Licensee, in its response disagrees with the NRC statement in the October 17, 1994 letter that the Licensee's corrective actions were not sufficiently prompt and comprehensive to warrant any mitigation of the penalty. The Licensee indicates that the NRC failed to recognize very significant additional actions that had already been taken by the time of the Enforcement Conference. The licensee details the corrective actions, which include the establishment of additional management oversight and monitoring controls. In addition, the Licensee maintains that the measures taken were effective, timely, comprehensive, and pro-active, and demonstrated a serious commitment to a quality and effective radiation safety program.

NRC Evaluation of Licensee's Request for Mitigation

The NRC letter, dated October 17, 1994, transmitting the civil penalty, notes that no credit was provided for the Licensee's corrective actions. As a result, a penalty of \$6,250 was proposed. Upon reconsideration and evaluation of the licensee's corrective actions, after receipt of the Licensee's November 14, 1994 and January 17, 1995 responses, the NRC agrees that the actions taken subsequent to the inspection were prompt and comprehensive and that the full mitigation allowable based on corrective action should be applied. Therefore, 50% mitigation of the base civil penalty amount is being applied in this case based on the corrective actions, which reduces the civil penalty amount by \$1,250. The

Licensee did not provide any basis for any further mitigation of the penalty. Accordingly, no further adjustment is warranted.

NRC Conclusion

The NRC has concluded that the violations occurred as stated in the Notice, although an example of Violation B should be withdrawn, as described herein. In addition, the NRC has concluded that the Licensee provided an adequate basis for reduction of the civil penalty based on its corrective actions. Accordingly, a civil penalty in the amount of \$5,000 should be imposed.

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

EA 94-257

March 2, 1995

Mr. Carmin J. DeVito, President
Geo-Tech Associates
43 South Avenue
Fanwood, New Jersey 07023

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$3,000

Dear Mr. DeVito:

Geo-Tech Associates is the holder of Byproduct Materials License No. 29-18205-02 (License) that was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on January 31, 1984. The License authorized the possession and use of cesium-137 and americium-241 in sealed sources for use in portable moisture density gauges.

Licensees of the Commission are required to pay annual fees. You failed to pay annual fees for Fiscal Year 1991. As a result, on August 11, 1992, an Order Revoking License (Order) was issued to Geo-Tech Associates for nonpayment of fees. As set forth in Section III.C. of the Order, you were required to dispose of any byproduct material possessed under the authority of your license within 30 days after the effective date of the Order, either by returning the material to the manufacturer or by transferring it to another person licensed to possess the material. As set forth in Section III.D. and III.E. of the Order, you were required to notify the Regional Administrator, in writing: (1) within five days of the disposition of the byproduct material; and (2) within 30 days, of the results of the survey conducted of the premises where NRC-licensed activities were carried out. Furthermore, since your license had been terminated, you were required to comply with the Commission's requirements set forth in 10 CFR 30.36, "Expiration and termination of licenses." Additionally, 10 CFR 30.3 provides, with exceptions not applicable to this case, that no person shall possess byproduct material except as authorized in a specific or general license. Although you requested a hearing on the Order, the Atomic Safety and Licensing Board (ASLB) dismissed the request on February 1, 1993, on the grounds that Geo-Tech Associates failed to: (1) respond to the charges set out in the Order; (2) comply with the ASLB's Order to explain why its hearing request was late; and (3) answer the NRC motion to dismiss the request for a hearing. The ASLB decision, which became final agency action on March 31, 1993, noted that the Order was final and effective.

As the result of a telephone discussion between you and Dr. Walter J. Pasciak of NRC Region I on August 16, 1994, it was determined that you still possessed byproduct material and had not complied with the requirements of the Order or NRC regulations. Consequently, by letter dated August 18, 1994, you were issued a Notice of Violation (NOV). The NOV cited you for your failure to comply with 10 CFR 30.3. In the cover letter transmitting the NOV, you were reminded that the Order had advised you that you were no longer authorized to possess or use byproduct material as a result of your failure to pay the Fiscal Year 1991 annual fee, and that the Order had directed you to transfer any byproduct material that was in your possession to an authorized recipient.

You responded to the NOV in a letter dated September 22, 1994, noting that you wished to apply for a "storage only" license as a small business entity. The NRC sent you an application package in a letter dated October 13, 1994. On December 12, 1994, you submitted an application for a storage-only license, but you did not submit sufficient funds to pay for back fees and an application fee for a portable gauge license. During a telephone conversation on December 14, 1994, with Mr. Duncan White and Ms. Sharon Johnson of this office, you were informed that the NRC would allow you 30 additional days to resolve all outstanding back fees with the NRC Fees Branch. Despite several phone calls between December 15, 1994, and January 11, 1995, with Ms. Sandra Kimberly of the Fees Branch, you have also failed to pay your back fees. To date, you have failed to pay fees owed, you have failed to transfer the byproduct material to an authorized recipient, you have failed to conduct the required radiation survey, and you remain in possession of the material without an NRC license.

Your actions represent deliberate violations of NRC requirements. The violations, which are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000 (Notice), involve: (a) possession of byproduct material without a license, contrary to 10 CFR 30.3; and (b) failure to adhere to conditions of the Order requiring transfer of the byproduct material to an authorized recipient, notification to the NRC of the disposition of byproduct material, and performance of radiation surveys of the premises where NRC-licensed activities were conducted.

The Atomic Energy Act of 1954, as amended (Act), limits possession of byproduct material to those who possess a valid NRC license. Deliberate violations of NRC requirements are a significant regulatory concern and cannot and will not be tolerated. These failures are particularly serious because, despite having been cited for these same violations in an NOV on August 18, 1994, and the numerous additional communications to you by the NRC, you failed to take appropriate corrective actions. Therefore, the violations described in the enclosed Notice have been classified in the aggregate as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

To emphasize the unacceptability of possessing byproduct material without an NRC license, your noncompliance with the August 11, 1992 Order, and the need for compliance with Commission requirements, I am issuing the enclosed Notice proposing a civil penalty in the amount of \$3,000 for the violations set forth in the Notice.

The base civil penalty amount for a Severity Level III problem is \$500. The civil penalty adjustment factors in the Enforcement Policy were considered and the base civil penalty was escalated as follows: (1) 50 percent escalation based on the identification factor because the violations were identified by the NRC; (2) 50 percent escalation based on the corrective action factor for your lack of corrective action; (3) 100 percent escalation based on the prior opportunity factor because of the notice that NRC provided as described above; and (4) 100 percent escalation based on the duration factor because the violations occurred over a long period of time. The remaining adjustment factors were considered and no further adjustment was considered appropriate. In addition, to emphasize the

importance of maintaining a valid license or properly transferring byproduct materials, particularly after the NRC ordered you to do so, the NRC is exercising discretion in accordance with Section VII.A of the Enforcement Policy and increasing the base civil penalty by an additional 200 percent. Therefore, cumulatively, the \$500 base civil penalty has been increased by a total of 500 percent, resulting in the proposed \$3,000 civil penalty.

Further, under Section 234 of the Atomic Energy Act, as amended, the NRC is authorized to impose daily civil penalties of up to \$100,000 per violation per day. Thus, given the regulatory significance of this case, you are hereby put on notice that, beginning on the day after the date of this Notice, the NRC will begin assessing a daily civil penalty of \$500 per day for the continuing violation involving your unauthorized possession of byproduct material unless you transfer the byproduct material to an authorized recipient within the next 30 days.

You are required to comply with the applicable provisions of 10 CFR Part 20 until the byproduct material is transferred to an authorized recipient. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. In addition, you should explain how you will comply with the Order issued August 16, 1992. Your response will be reviewed to determine whether further enforcement action will be taken against you. Your continued failure to comply with the Order may result in additional civil and/or criminal sanctions.

If you have any questions concerning this action, please contact Ms. Patricia Santiago, Assistant Director for Materials, Office of Enforcement, at (301) 504-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room (PDR). To the extent possible, your response should not contain 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 Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

Sincerely,

Thomas T. Martin
Regional Administrator

Geo-Tech Associates

4

Docket No. 030-20693

License No. 29-18205-02 (Revoked)

Enclosure: Notice of Violation and Proposed Imposition
of Civil Penalty - \$3,000

cc w/encl:

PUBLIC

Nuclear Safety Information Center (NSIC)

State of New Jersey

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Geo-Tech Associates
Fanwood, New Jersey

Docket No. 030-20693
License No. 29-18205-02 (Revoked)
EA 94-257

Based on a review of communications (and associated documents) between the NRC and Geo-Tech Associates between August 11, 1992 and January 11, 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 Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from August 19, 1994 through the date of this Notice of Violation, Geo-Tech Associates has continued to be in possession of byproduct material (namely americium-241 and cesium-137) not authorized under a specific or general license, and Geo-Tech Associates is not exempt as provided in 10 CFR Parts 30 and 150 since License No. 29-18205-02 was revoked as of September 11, 1992, via an Order Revoking License issued August 11, 1992. (01013)

- B. Section III.C of an NRC Order Revoking License issued on August 11, 1992, required that Geo-Tech Associates dispose of any licensed material acquired or possessed under the authority of License No. 29-18205-02 within thirty (30) days after the effective date of the Order, either by returning the material to the manufacturer or transferring it to another person licensed to possess the same material.

Section III.D of the NRC Order Revoking License issued on August 11, 1992, required that Geo-Tech Associates notify, in writing, within five days after the disposal of the material, the Regional Administrator for NRC Region I, of the disposition of any licensed material which may have been possessed on the date of the Order under authority of License No. 29-18205-02.

Section III.E of the NRC Order Revoking License issued on August 11, 1992, required that Geo-Tech Associates, within thirty (30) days of the effective date of the Order, conduct a radiation survey of the premises where the licensed activities were carried out, as set forth in 10 CFR 30.36(c)(1)(v) and submit a report of the results of this survey to the Regional Administrator for NRC Region I.

Contrary to the above, as of the date of this Notice of Violation, Geo-Tech Associates has not informed the NRC that material possessed under Revoked License No. 29-18205-02 has been properly disposed of, nor has Geo-Tech Associates submitted a report of the results of the survey to the Regional Administrator, and the NRC is not otherwise aware that the material had been transferred to an authorized recipient and that the required survey was conducted. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, Geo-Tech Associates 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. 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 or other appropriate action 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, Geo-Tech Associates 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 Geo-Tech Associates fail to answer within the time specified, an order imposing the civil penalty will be issued. Should Geo-Tech Associates 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 Geo-Tech Associates 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 that 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: Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Dated at King of Prussia, Pennsylvania
this 2nd day of March 1995

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

March 31, 1995

EA 94-257

Mr. Carmin J. DeVito, President
Geo-Tech Associates
43 South Avenue
Fanwood, New Jersey 07023

SUBJECT: NOTICE OF TERMINATION OF LICENSE AND RESCISSION OF CIVIL PENALTY

Dear Mr. DeVito:

Enclosed is a Notice of Termination of License for Byproduct Material License No. 29-18205-02. The License is being terminated because Geo-Tech Associates (Geo-Tech) has transferred the byproduct material after the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000 (Notice) to you on March 2, 1995. Notification of the transfer of the material was made to Ms. Sharon Johnson, NRC Region I, by you on March 8, 1995.

On August 11, 1992, the NRC issued to Geo-Tech an Order Revoking License (Order) for failure to pay the required annual fee. That Order required Geo-Tech to dispose of the byproduct material in its possession either by returning the material to the manufacturer or by transferring it to an authorized recipient. However, Geo-Tech did not dispose of the byproduct material in accordance with the Order. Following numerous notifications to transfer the byproduct material, the March 2, 1995 Notice notified Geo-Tech that significant additional civil penalties would be imposed if the byproduct material was not transferred or disposed within 30 days of the date of the Notice. Geo-Tech transferred the material to an authorized recipient (Frank Lehr Associates of East Orange, New Jersey) on March 7 and 8, 1995.

After careful consideration and consultation with the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support and the Director, Office of Enforcement, the NRC is exercising the discretion permitted in Section VII.B(6) of the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, and is rescinding the civil penalty proposed on March 2, 1995. Enforcement discretion is being exercised because Geo-Tech transferred the byproduct material to an authorized recipient six days following the issuance of the Notice. Accordingly, the proposed civil penalty is hereby rescinded.

In the future, if you wish to engage in NRC-licensed activities, you should be prepared to demonstrate to the NRC, pursuant to 10 CFR 30.32(b), in writing: (1) why the NRC should have confidence that you will comply with Commission requirements; and (2) your financial ability to safely perform NRC-licensed activities and pay the required fees if you are a licensee.

Should you have any questions regarding this matter, please contact Mr. Walt Pasciak, NRC, Region I at (610) 337-5258. Also, the NRC Office of the Controller will address the matter of delinquent debts by separate correspondence.

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,

A handwritten signature in black ink, appearing to read "Thomas T. Martin". The signature is fluid and cursive, with a prominent initial "T" and a long, sweeping underline.

Thomas T. Martin
Regional Administrator

Docket No. 030-20693
License No. 29-18205-02 (Revoked)

Enclosure: Notice of Termination of License

ENCLOSURE

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-20693
GEO-TECH ASSOCIATES	)	License No. 29-18205-02 (Revoked)
Fanwood, New Jersey	)	EA 94-257

NOTICE OF TERMINATION OF LICENSE

I

Geo-Tech Associates (Licensee) held Byproduct Materials License No. 29-18205-02 (License), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the possession and use of byproduct material as sealed sources of cesium-137 and americium-241 in accordance with the conditions specified therein. The License was issued on January 31, 1984, and was revoked effective September 10, 1992.

II

On August 11, 1992, the NRC issued an Order Revoking License (Order) to the Licensee for its failure to pay the annual fee for Fiscal Year 1991. The Order stated that the Commission sent an invoice dated August 9, 1991, to the Licensee requesting payment of the annual fee within 30 days. The Order also stated that the NRC sent a second payment notice dated September 10, 1991, and a third notice of payment due, together with a Notice of Delinquent Debt, to the Licensee on October 8, 1991. The third notice informed the Licensee that "nonpayment of your fee may result in revocation of your License in accordance with the enforcement provisions of the Commission's regulations," namely, 10 CFR 171.23. The Order, which was based on the Licensee's failure to pay the License annual fee (a violation of 10 CFR 171.16) ordered, in part, that: (1) on September 10, 1992

(30 days from the effective date of the Order), the License was revoked, except that it continued in effect with respect to residual byproduct material present as contamination or in other form until the Commission notified the Licensee, in writing, that the License was terminated; (2) as of September 10, 1992, and until the Commission notifies the Licensee in writing that the License is terminated, the Licensee shall limit actions involving byproduct material to decommissioning and continue to control entry to restricted areas; (3) the Licensee dispose of any byproduct material acquired or possessed under the License by September 10, 1992, either by returning the material to the manufacturer or by transferring it to an authorized recipient; (4) within five days after disposal of the material, the Licensee notify the NRC of the disposition of the material; and (5) by September 30, 1992, the Licensee conduct a radiation survey of the premises where byproduct material was used, as set forth in 10 CFR 30.36(c)(1)(v), then in effect.

On August 18, 1994, the NRC issued a letter which transmitted a Notice of Violation and reminded the Licensee that it was in continuous noncompliance with NRC requirements because of its possession of byproduct material with a revoked NRC license, a violation of 10 CFR 30.3, and that it must transfer the byproduct material to an authorized recipient. However, as of March 2, 1995, a transfer of the material had not occurred.

Accordingly, on March 2, 1995, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000; and Notification of Consideration of the Imposition of Daily Civil Penalties (Notice), to emphasize the unacceptability of possessing byproduct material without a license, the Licensee's noncompliance with the August 11, 1992 Order, and the need for compliance with NRC requirements.

On March 8, 1995, Geo-Tech notified the NRC that it subsequently transferred the byproduct material to Frank Lehr Associates of East Orange, New Jersey. During a telephone call and by facsimile on March 13, 1995, Frank Lehr Associates representatives informed the NRC Region I staff that the byproduct material was received from Geo-Tech on March 7 and 8, 1995.

III

Accordingly, given the revocation of the license for the Licensee's failure to pay the annual fee and the Licensee's transfer of the byproduct material six days following the issuance of the Notice, License No. 29-18205-02 is hereby terminated.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas T. Martin
Regional Administrator

Dated at King of Prussia, Pennsylvania
this 31st day of March 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

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

March 2, 1995

EA 95-026

Hawaiian Rock Products
ATTN: Thomas Y. Young
Executive Vice President
P.O. Box H
Agana, Guam 96910

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$150 (NRC Inspection Report No. 030-20449/95-01)

This refers to the inspection conducted January 31, 1995, of licensed activities conducted by Hawaiian Rock Products, Agana, Guam. As discussed with you during a telephonic exit interview on February 8, 1995 (February 9 in Guam), the inspection disclosed a repetitive violation of License Condition 11. License Condition 11 requires that your Troxler asphalt content gauge, which contains a sealed Americium-241 source, be used by designated individuals who have taken the gauge manufacturer's training program or, in lieu of training, be used in the presence of individuals specifically named in the license.

During the inspection, the NRC inspector determined that Hawaiian Rock Products had permitted individuals to use the asphalt content gauge despite their not having completed the manufacturer's training program and despite their not being in the presence of individuals specifically named in License Condition 11. This violation was previously cited following inspections in February 1991 and January 1989.

The NRC acknowledges that the safety significance of this violation is low given the type of gauge involved, the fact that it is in a laboratory setting and is not moved, and the fact that some training in the use of the gauge was provided to users. However, as indicated in Sections IV.B and VI.B of the "General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy)," 10 CFR Part 2, Appendix C, the NRC attaches greater significance to repetitive violations and may impose sanctions to reflect this added significance. A copy of the Enforcement Policy is enclosed.

The NRC is concerned that Hawaiian Rock Products has been found in violation of this requirement in three consecutive inspections. As a license holder, you have a responsibility to assure compliance with all license conditions and other NRC requirements on a continuing basis. When violations are identified, you have a responsibility to take corrective actions that are effective in preventing recurring violations. This is particularly important given the limited frequency of NRC inspections of your activities.

The NRC acknowledges that Hawaiian Rock Products has taken steps to achieve compliance and is considering sending an additional individual to the manufacturer's training course or having the manufacturer conduct training in

Guam. Notwithstanding these efforts, to emphasize the importance of correcting noncompliance and assuring that violations remain corrected, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$150 for the Severity Level IV violation discussed above and in the Notice. The base value of a civil penalty for a Severity Level IV violation is \$150 for gauge users (Table 1A in Enforcement Policy). In accordance with Section VI.B.2 of the Enforcement Policy, the civil penalty adjustment factors were not considered in assessing this amount.

The inspection found an additional item of noncompliance that is not being cited. This non-cited violation involved a failure to post current copies of the regulations in 10 CFR Parts 19 and 20, as required by 10 CFR 19.11. This is not being cited because it is of minor safety significance (Severity Level V), and because corrective actions were initiated during the inspection. Thus, this noncompliance meets the criteria in Section VII.B.1 of the Enforcement Policy for non-cited violations.

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

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy 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 Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

Sincerely,

L. J. Callan
Regional Administrator

Docket No. 030-20449
License No. 56-23278-01

Enclosures:

1. Notice of Violation & Proposed Imposition of Civil Penalty
2. NRC Enforcement Policy

cc w/Enclosure 1: Territory of Guam

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Hawaiian Rock Products
Agana, Guam

Docket No. 030-20449
License No. 56-23278-01
EA 95-026

During an NRC inspection conducted January 31 - February 8, 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 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:

License Condition 11 of License No. 56-23278-01 states, in part, that licensed material shall be used by, or under the supervision and in the physical presence of, George S. Redoble, Thomas Y. Young, or individuals who have successfully completed the manufacturer's training program for gauge users and who have been designated by the Radiation Protection Officer, George S. Redoble.

Contrary to the above, on January 31, 1995, licensed material was used by individuals who: 1) were not under the supervision of and in the physical presence of George S. Redoble or Thomas Y. Young; and 2) had not successfully completed the manufacturer's training program for gauge users and had not been designated by the Radiation Protection Officer. Specifically, the inspector determined that individuals who were not authorized in accordance with the terms of the license had used a Troxler 3241-C asphalt content gauge containing a sealed source of licensed material (100 millicuries of Americium-241).

This is a repetitive Severity Level IV violation (Supplement VI).
Civil Penalty - \$150

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

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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 violation 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, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, 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 2nd day of March 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

November 16, 1994

EA 94-198

Hunt Concrete Company
ATTN: Mr. Paul Hunt
President
Post Office Box 98
1401 Old Highway 40 East
Warrenton, Missouri 63383

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,000; NOTIFICATION OF CONSIDERATION OF THE IMPOSITION OF DAILY
CIVIL PENALTIES

Dear Mr. Hunt:

Hunt Concrete Company (Hunt) is the holder of revoked Byproduct Materials License No. 24-26226-01 (license) which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on September 4, 1990. The License authorized the possession and use of cesium-137 and americium-241 in sealed sources for use in portable moisture density gauges. Licensees of the Commission are required to pay annual fees. You have failed to pay annual fees for Fiscal Year 1991 and thereafter. As a result, an Order Revoking License was issued to Hunt by the NRC on October 23, 1992 and became effective November 20, 1992. That Order required you to dispose of any licensed nuclear material within 30 days of the effective date of the Order and conduct a radiation survey, as set forth in 10 CFR 30.36(c)(1). Further, 10 CFR 30.3 provides, with exceptions not applicable to this case, that no person shall possess byproduct material except as authorized in a specific or general license.

Our records indicate that you have not met these requirements, even though the NRC provided you ample opportunity to achieve compliance. The NRC wrote you on June 24, 1994, and informed you that Hunt was in continuous noncompliance with NRC regulations for possessing byproduct material without a valid NRC license and that it must transfer the byproduct material to an authorized recipient or inform the NRC of the reason why it was unable to do so. On August 5, 1994, Hunt responded to the letter, informing NRC that the device would be transferred to an authorized licensee. However, to date this has not occurred.

Your actions represent deliberate violations of NRC requirements. The violations, which are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), involve failure to transfer byproduct material and conduct a radiation survey, as required by the Order of October 23, 1992, and possession of byproduct material without a license, contrary to 10 CFR 30.3.

The Atomic Energy Act of 1954, as amended (Act), limits possession of byproduct material to those who possess a valid NRC license. Deliberate violations of NRC requirements are a significant regulatory concern because the conduct of licensed activities in accordance with the Act and the Commission's requirements depends in large part on the integrity of individuals conducting NRC-licensed activities. These failures are particularly serious because, despite the communications to you by the NRC, you failed to take appropriate corrective actions. Therefore, the violations described in the enclosed Notice have been classified as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C.

To emphasize the unacceptability of possessing byproduct material without a license, your noncompliance with the October 23, 1992 Order, and the need for compliance with Commission requirements, I am issuing the enclosed Notice proposing a civil penalty in the amount of \$3,000 for the violations set forth in the enclosed Notice.

The base civil penalty amount for a Severity Level III problem is \$500. The Civil Penalty Adjustment Factors in the Enforcement Policy were considered and the base civil penalty was escalated as follows: (1) 50 percent escalation based on the identification factor because the violations were identified by the NRC; (2) 50 percent escalation based on the corrective action factor for your lack of corrective action; (3) 100 percent escalation based on the prior opportunity factor because of the notice that the NRC provided as described above; and (4) 100 percent escalation based on the duration factor because the violations occurred over a long period of time. The remaining adjustment factors were considered and no further adjustment was considered appropriate. In addition, to emphasize the importance of maintaining a valid license or properly disposing of NRC-licensed materials, particularly after the NRC directed and reminded you to do so, the NRC is exercising discretion in accordance with Section VII.A of the Enforcement Policy and increasing the base civil penalty by an additional 200 percent. Therefore, cumulatively, the \$500 base civil penalty has been increased by a total of 500 percent, resulting in the proposed \$3,000 civil penalty.

Further, given the regulatory significance of this case, if Hunt does not transfer or promptly dispose of the material as previously directed, you are hereby notified that the NRC intends to consider daily civil penalties of \$500 per day. Daily civil penalties are justified because you were clearly aware that you were in violation of NRC requirements, and yet you failed to take effective corrective actions. If assessed, the daily civil penalty would continue until the byproduct material is properly transferred or disposed of, and would be imposed for each 30-day-period at \$15,000 per period. Prior to commencing the imposition of daily civil penalties, the NRC staff will provide Hunt with a grace period of 30 days, that is, if Hunt transfers or properly disposes of its byproduct material within 30 days of the date of this letter, daily civil penalties would not be assessed.

You are required to comply with the applicable provisions of 10 CFR Part 20 until the byproduct material is transferred to an authorized recipient. You must comply with the Order Revoking License. You are also required to respond to this Notice explaining how you will comply with that Order. Your response will be reviewed to determine whether further enforcement action will be taken against you pursuant to 10 CFR 30.10, "Deliberate misconduct". Your continued failure to comply with that Order may result in additional civil or criminal sanctions.

If you have any questions concerning this Notice, please contact Mr. John Madera, Chief, Nuclear Materials Licensing Section, at (708) 829-9834.

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 (PDR). To the extent possible, your response should not contain 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 Notice and 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,

John B. Martin
Regional Administrator

Docket No. 030-31845
License No. 29-26226-01 (Revoked)

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/encl:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
State of Missouri

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Hunt Concrete Company (Hunt)
Warrenton, Missouri

Docket No. 030-31845
License No. 29-26226-01 (Revoked)
EA 94-198

Based on a review of communications (and associated documents) conducted between the NRC and Hunt Concrete Company between July 1991 and November 7, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from November 20, 1992 through October 31, 1994, Hunt Concrete Company has been in possession of byproduct material not authorized under a specific or general license, and Hunt Concrete Company is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

- B. 10 CFR 30.36(c)(1) requires, in part, that the licensee shall properly dispose of byproduct material and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey.

An Order Revoking License, issued by the NRC to Hunt Concrete Company on October 23, 1992 and effective November 20, 1992, required Hunt to dispose of any licensed nuclear material within 30 days of the effective date of the Order, and to conduct a radiation survey of the premises where licensed activities were carried out, in accordance with 10 CFR 30.36(c)(1).

Contrary to the above, as of October 31, 1994, the licensee had not disposed of its byproduct material or submitted a report of the results of a survey of the premises where the licensed activities were carried out, in accordance with 10 CFR 30.36(c)(1) and as required by the Order. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, Hunt Concrete Company (Hunt) 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 or other appropriate action 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, Hunt 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 Hunt fail to answer within the time specified, an order imposing the civil penalty will be issued. Should Hunt 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 Hunt 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.

Notice of Violation

- 3 -

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 III.

Dated at Lisle, Illinois
this 16 day of November 1994

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

February 13, 1995

EA 94-198

Hunt Concrete Company
ATTN: Mr. Paul Hunt
President
Post Office Box 98
1401 Old Highway 40 East
Warrenton, Missouri 63383

SUBJECT: NOTICE OF TERMINATION OF LICENSE AND RESCISSION OF CIVIL PENALTY

Dear Mr. Hunt:

Enclosed is a Notice of Termination of License to Byproduct Material License No. 24-26266-01 (License). The License is being terminated because Hunt Concrete Company (Hunt) has transferred the byproduct material after the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000 (Notice).

On October 23, 1992, the NRC issued an Order Revoking License (Order) for failure to pay the required annual fee. That Order required Hunt to dispose of the byproduct material in its possession either by returning the material to the manufacturer or by transferring it to an authorized recipient. However, Hunt did not dispose the byproduct material in accordance with the Order. Following numerous notifications to transfer the byproduct material, the November 16, 1994 Notice notified Hunt that significant civil penalties would be imposed if the byproduct material was not transferred or disposed within 30 days of the date of the Notice. Hunt transferred the material to an authorized recipient on December 15, 1994.

After careful consideration and consultations with the Deputy Executive Director for Nuclear Materials Safety, the NRC is exercising the discretion permitted in Section VII.B(6) of the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, and is rescinding the civil penalty proposed on November 16, 1994. Enforcement discretion is being exercised because Hunt transferred the byproduct material to an authorized recipient within the 30 days stated in the Notice. Accordingly, the proposed civil penalty is hereby rescinded. However, should Hunt decide to engage in NRC-licensed activities in the future or apply for an NRC license, you will be required to demonstrate to the NRC, pursuant to 10 CFR 30.32(b), in writing: (1) why the NRC should have confidence that Hunt will comply with Commission requirements; and (2) Hunt's financial ability to safely perform NRC-licensed activities and pay the required fees.

Hunt Concrete Company

- 2 -

Should you have any questions regarding this matter, please contact Mr. John Madera, Chief, Nuclear Materials Licensing Section at (708) 829-9500. Also, the NRC Office of the Controller will address the matter of delinquent debts by separate correspondence.

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,

Joseph R. Gray, Acting Director
Office of Enforcement

Docket No. 030-31845
License No. 29-26226-01 (Revoked)

Enclosure: Notice of Termination of License

cc w/encl:
Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
State of Missouri
Troxler Laboratories, Inc.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-31845
HUNT CONCRETE COMPANY	)	License No. 29-26226-01 (Revoked)
Warrenton, Missouri	)	EA 94-198

NOTICE OF TERMINATION OF LICENSE

I

Hunt Concrete Company (Licensee) held Byproduct Materials License No. 29-26226-01 (License), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the possession and use of byproduct material as sealed sources of cesium-137 and americium-241 in accordance with the conditions specified therein. The License was issued on September 4, 1990, and was revoked effective November 20, 1992.

II

On October 23, 1992, the NRC issued an Order Revoking License (Order) to the Licensee for its failure to pay the annual fee for Fiscal Year 1991, which was due on August 9, 1991. The Order stated that the Commission sent an invoice dated August 9, 1991, to the Licensee requesting payment of the annual fee within 30 days. The Order also stated that the NRC sent a second payment notice dated September 10, 1991, and a third notice of payment due, together with a Notice of Delinquent Debt, to the Licensee on October 8, 1991. The third notice informed the Licensee that "nonpayment of your fee may result in

revocation of your License in accordance with the enforcement provisions of the Commission's regulations," namely, 10 CFR 171.23. The Order, which was based on the Licensee's failure to pay the License annual fee, a violation of 10 CFR 171.16, ordered, in part, that: (1) on November 20, 1992 (30 days from the effective date of the Order), the License was revoked, except that it continued in effect with respect to residual byproduct material present as contamination or in other form until the Commission notified the Licensee, in writing, that the License was terminated; (2) as of November 20, 1992, and until the Commission notifies the Licensee in writing that the License is terminated, the Licensee shall limit actions involving byproduct material to decommissioning and continue to control entry to restricted areas; (3) the Licensee dispose of any byproduct material acquired or possessed under the License by November 20, 1992, either by returning the material to the manufacturer or by transferring it to an authorized recipient; (4) within 5 days after disposal of the material, the Licensee notify the NRC of the disposition of the material; and (5) by November 30, 1992, the Licensee conduct a radiation survey of the premises where byproduct material was used, as set forth in 10 CFR 30.36(c)(1)(v).

On June 24, 1994, the NRC issued a letter which reminded the Licensee that it was in continuous noncompliance with NRC requirements because of its possession of byproduct material with a revoked NRC license, a violation of 10 CFR 30.3, and that it must transfer the byproduct material to an authorized recipient. By that letter, the Licensee was also informed that if it was unable to transfer the material to an authorized recipient within 30 days of the date of that letter, that it inform the NRC, in writing, of the reason why

it was unable to do so.

In response to the NRC letter of June 24, 1994, the Licensee contacted NRC Region III on August 5, 1994, and informed the NRC that the byproduct material would be transferred to an authorized licensee. However, as of November 16, 1994, that transfer had not occurred.

On November 16, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3,000; Notification of Consideration of the Imposition of Daily Civil Penalties (Notice), to emphasize the unacceptability of possessing byproduct material without a license and the need for compliance with NRC requirements.

By letter, dated December 14, 1994, Hunt informed the NRC that the byproduct material was transferred to Troxler Laboratories Inc. (Troxler) of Research Triangle Park, North Carolina. During a telephone call on December 28, 1994, Troxler representatives informed the NRC Region III staff that the byproduct material was received from Hunt on December 22, 1994.

III

Accordingly, given the Licensee's failure to pay the annual fee for the License and the Licensee's transfer of the byproduct material within 30 days

after the NRC issued the Notice, License No. 29-26226-01 is hereby terminated.

FOR THE NUCLEAR REGULATORY COMMISSION

Joseph R. Gray, Acting Director
Office of Enforcement

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

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

February 9, 1995

EAs 94-244 and 95-003

Material Testing Laboratories, Inc.
ATTN: Peter H. Lorsong
Operations Manager
1531 Early Street
Norfolk, Virginia 23502-1603

SUBJECT: ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY) AND NOTICE OF
VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$7,500
(NRC INSPECTION REPORT NO. 45-17151-01/94-02)

Dear Mr. Lorsong:

This refers to the inspection conducted by Mr. J. Mumper of this office on November 15, 16, 21 and 23, 1994. The inspection included reviews of your radiation safety program and compliance with NRC requirements and with the conditions of your NRC license during radiography operations that you conducted in Tysons Corner, Virginia, on November 15, 1994. 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 8, 1994. A transcribed enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia, on December 20, 1994 to discuss the violations, their cause, and your corrective actions to preclude recurrence. The letter summarizing the transcribed enforcement conference was sent to you on December 29, 1994.

The violations described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involved: (1) use of NRC-licensed material by an unauthorized and unqualified individual; (2) failure to perform an adequate survey following a radiographic exposure; (3) failure to maintain direct surveillance of radiographic operations by an authorized and qualified individual; (4) failure to post a high radiation area; and (5) failure to post a radiography vehicle as a radioactive material storage area at a temporary job site. The root causes of the violations included lack of attention to required radiation safety procedures by the radiographer and lack of management oversight of radiographic operations.

These five violations, when taken collectively, represent a significant breakdown in the management control and oversight of NRC-licensed activities. The violations indicate that there was a failure by management and the Radiation Safety Officer to ensure that all employees comply with radiation safety procedures and NRC requirements. Furthermore, you acknowledged during the transcribed enforcement conference that weaknesses in management oversight of the Lorton, Virginia, field office activities contributed to the violations. These weaknesses included a lack of appreciation of the effect of excessive overtime work on employees' performance and failure to promptly review the work practices of the radiographer involved in the November 15,

1994 violations when poor performance had been indicated during a previous State of Maryland inspection. 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 as a Severity Level III problem.

The NRC recognizes that you took corrective actions when the violations were identified during the NRC inspection. These actions included:

(1) temporarily stopping operations conducted from the Lorton, Virginia, office and temporarily returning the source to the Norfolk, Virginia, office; (2) conducting training for all your radiographers; (3) revising and clarifying job assignment forms to indicate the employee's qualifications; (4) adding additional high radiation area signs to the equipment truck in the Lorton, Virginia, office. In addition, you indicated at the enforcement conference that you and your employees were aware of the importance of adherence to NRC requirements and your license conditions and were committed to improving the quality of your program.

Notwithstanding your corrective actions, we are particularly concerned that, despite your earlier efforts in training the involved radiographer following violations identified during a State of Maryland inspection in October 1994, that training apparently had not been effective. Therefore, to emphasize the need to conduct radiographic operations safely and in accordance with NRC requirements and to ensure effective management control and oversight of radiographic operations, I am issuing the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$7,500 for the Severity Level III problem. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows.

The base value of a civil penalty for a Severity Level III problem is \$5,000. Escalation of 50 percent was applied for the factor of identification because the NRC identified the violations. No adjustment was warranted for the corrective action factor because at the time of the enforcement conference it was identified that your initial corrective actions were not effective to adequately identify or address the root causes of the violations or identify the lack of effective management control and oversight. No adjustment was warranted for the licensee performance factor because the current violations reflect a substantial decline in performance that has occurred over time since the last NRC inspection in June 1993. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the base value of the civil penalty has been increased by 50 percent.

The NRC is concerned that your radiographers have engaged in unsafe work practices and that management has failed to monitor and correct weaknesses in their performance. The NRC relies on licensees and their employees to perform NRC-licensed activities in compliance with NRC requirements. As stated in the Enforcement Policy, the NRC holds the licensee responsible for the acts of its employees. In view of the above, the NRC is issuing the enclosed Order Modifying license (Effective Immediately) to confirm that your radiography

activities are conducted in accordance with NRC requirements. The Order requires that you: (1) retain and maintain the services of a Radiation Safety Officer to oversee the activities of radiographers based at the Lorton, Virginia, facility and submit within 30 days the name and qualifications for approval by Region II; (2) retain the services of an independent consultant to perform an initial assessment of your radiation safety program in Lorton, Virginia, and quarterly audits thereafter for a period of one year; (3) have the consultant submit its assessment report and each quarterly audit report to you and to the NRC; (4) submit your response to each audit report to the NRC either describing the implementation of each of the necessary corrective actions or justification for not adopting one or more of the recommendations; (5) within 30 days of returning the radiographer involved in the November 15, 1994 violations to unsupervised work, have the consultant perform an audit of the radiographer, with further such audits quarterly thereafter for one year; and (6) for a period of one year from the date of this Order, notify NRC Region II each week of the location in non-Agreement states where the radiographer involved in the November 15, 1994 violations will be conducting radiography operations and provide prior notice if unplanned work arises after the weekly notification.

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. Please provide a copy of this letter and its enclosures to the radiographer who may provide a response to the Order within 20 days of the date of the Order. Any response should be under oath or affirmation.

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 requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of the letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial

Material Testing
Laboratories, Inc.

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information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection, described in 10 CFR 73.21.

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.

Questions concerning this Order should be addressed to Ms. P. Santiago, Assistant Director for Materials, Office of Enforcement, who can be reached at (301) 504-3055.

Sincerely,

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

Docket No. 030-12279
License No. 45-17151-01

Enclosures:

1. Notice of Violation and Proposed
Imposition of Civil Penalty
2. Order Modifying License
(Effectively Immediately)

cc w/encls:
Commonwealth of Virginia
State of Maryland

Mr. K. Davenport
(ADDRESS DELETED
UNDER 10 CFR 2.790)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Material Testing Laboratories, Inc.
Norfolk, Virginia

Docket No. 030-12279
License No. 45-17151-01
EA 94-244

During an NRC inspection conducted on November 15, 16, 21 and 23, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

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

Contrary to the above, on November 15, 1994, the licensee failed to ensure that an individual who acted as a radiographer's assistant met the requirements of that position, in that an individual who operated the exposure device had not demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and had not demonstrated understanding of the instructions by successfully completing a written or oral test and field examination on the subjects covered. (01013)

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

Contrary to the above, on November 15, 1994, at a temporary job site in Tysons Corner, Virginia, a licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position, in that the survey did not include the entire circumference of the radiographic exposure device and the source guide tube. Specifically, the radiographer surveyed one side and the front of the camera, and approximately two feet of the guide tube. (02013)

- C. 10 CFR 34.41 requires that during each radiographic operation, the radiographer or radiographer's assistant maintain direct surveillance of the operation to protect against unauthorized entry into a high

Notice of Violation

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radiation area, as defined in 10 CFR Part 20, except where the high radiation area is equipped with a control device or alarm system, or locked.

Contrary to the above, on November 15, 1994, at a temporary job site in Tysons Corner, Virginia, a licensee radiographer failed to maintain direct surveillance over the radiographic operation to protect against entry into the high radiation area, and the high radiation area was not equipped with a control device or alarm system or locked. Specifically, the radiographer left the surveillance to a helper who was neither qualified as a radiographer nor radiographer's assistant. (03013)

- D. 10 CFR 34.42 requires, notwithstanding any provisions in 10 CFR 20.1903, that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.1902(a) and (b).

10 CFR 20.1902(b) requires that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION HIGH RADIATION AREA."

Contrary to the above, on November 15, 1994, during radiography operations performed at a temporary job site in Tysons Corner, Virginia, the licensee failed to post a high radiation area in which industrial radiography was being performed as required by 10 CFR 20.1902(b). (04013)

- E. Condition 20 A. of License 45-17151-01 requires, in part, that the licensee possess and use licensed material in accordance with statements, representations and procedures contained in the Material Testing Laboratories, Inc. Industrial Radiography Program Manual, revised May 17, 1993.

Item IX. E. of the Industrial Radiography Program Manual requires, in part, that when the vehicle is used for storage at a temporary job site, the vehicle will be posted with signs reading "CAUTION RADIOACTIVE MATERIAL."

Contrary to the above, on November 15, 1994, the licensee's radiography vehicle used for temporary storage at a temporary job site in Lorton, Virginia, was not posted with signs reading "CAUTION RADIOACTIVE MATERIALS." (05013)

This is a Severity Level III problem (Supplement VI).
Civil Penalty - \$7,500

Pursuant to the provisions of 10 CFR 2.201, Material Testing Laboratories, 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

Notice of Violation

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reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil 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 violation(s) listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

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

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

Notice of Violation

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The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II.

Dated at Rockville, Maryland
this 9th day of February 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MATERIAL TESTING
LABORATORIES, INC.
Norfolk, Virginia

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Docket No. 030-12279
License No. 45-17151-01
EA 95-003

ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Material Testing Laboratories, Inc. (Licensee) is the holder of Byproduct Material License No. 45-17151-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes, in part, possession and use of byproduct material not to exceed 200 curies of Iridium-192 per source in the operation of radiography exposure devices. The License further authorizes the Licensee to perform radiography at temporary job sites in accordance with the conditions specified therein. The License, originally issued on March 17, 1977, was renewed on December 16, 1993, and is due to expire on December 1, 1998.

II

On November 15, 1994, an inspection of NRC-licensed activities was conducted at a temporary job site in Northern Virginia and at the Licensee's office in Norfolk, Virginia. As a result of the inspection, apparent violations of NRC requirements were identified, which are the subject of a Notice of Violation and Proposed Imposition of Civil Penalty issued this date. The violations identified during the NRC inspection include:

1. use of NRC-licensed material by an unauthorized and unqualified individual, in violation of 10 CFR 34.31(b);
2. failure to maintain direct surveillance of radiographic operations by an authorized and qualified individual, in violation of 10 CFR 34.41;
3. failure to perform an adequate survey following a radiographic exposure, in violation of 34.43(b);
4. failure to post a high radiation area, in violation of 10 CFR-34.42; and
5. failure to post the Licensee's radiography vehicle as a radioactive material storage area at a temporary job site, in violation of Condition 20 A. of the License.

A transcribed enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia, on December 20, 1994, to discuss the violations, their cause, and the Licensee's corrective actions. During the enforcement conference, the Licensee acknowledged that weaknesses in management and in Radiation Safety Officer oversight of the Lorton, Virginia, field office activities contributed to the violations. These weaknesses included a lack of appreciation by management and the Radiation Safety Officer (RSO) of the effect of excessive overtime work on employees' performance and failure to promptly monitor work practices of the radiographer involved in the

November 15, 1994, violations following the indications of his poor performance by a State of Maryland inspection which identified a failure to maintain a radiography exposure device under constant surveillance and control.

III

Based on the above, the NRC has concluded that the Licensee has violated NRC requirements. The performance of NRC-licensed activities requires use of appropriate safety procedures, training of personnel regarding those procedures, meticulous attention to detail by personnel conducting radiography, and proper oversight by Licensee management to ensure these activities are conducted safely and in accordance with NRC requirements. This attention is particularly important during the performance of radiography given the high radiation levels that can result from use of the sources. The failure to properly control the use of the radiography devices could result in significant radiation exposure to individuals, both employees and members of the general public. The radiographer who had primary responsibility for use and control of NRC-licensed material at the temporary job site failed to maintain proper control and surveillance during radiographic operations. The radiographer, as noted above, one month earlier also failed to maintain constant surveillance and control of a radiography exposure device in the State of Maryland. In addition, based on the violations and weaknesses identified above and information and statements obtained during the transcribed enforcement conference, the RSO, who has the responsibility for ensuring that NRC requirements are met, had not adequately controlled or

maintained oversight of the Licensee's NRC-licensed activities in the Northern Virginia area to ensure compliance with all NRC requirements including the conditions of the License.

The violations described in Section II of this Order and the concerns set forth above demonstrate a significant lack of attention to required radiation safety requirements by the radiographer and lack of management control and oversight of radiographic operations by the RSO and Licensee management. Specifically, after the incident in Maryland, the RSO did not identify the root causes of the violations, the RSO did not perform a field audit of the radiographer's performance, and the retraining of the involved radiographer was not sufficient to prevent the November 15, 1994 incident which had similar violations. Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 45-17151-01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public, health, and safety and interest require that the License be modified as described below in Section IV. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations 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 and 10 CFR Parts 30 and 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 45-17151-01 IS MODIFIED AS FOLLOWS:

- A. The Licensee shall retain and maintain the services of an RSO approved by Region II to oversee the activities of its radiographers based at the Lorton, Virginia, facility. The RSO duties must take priority over any other duty. The Licensee shall within 30 days submit the name and qualifications of the Lorton RSO for approval to the Regional Administrator, Region II.
- B. The Licensee shall retain the services of an independent individual or organization (consultant) to perform an initial assessment of the Licensee's radiation safety program in Lorton, Virginia, and quarterly audits thereafter for a period of one year to determine compliance with all NRC requirements. The consultant shall also provide recommendations for program improvements to ensure effective management oversight and control of radiography operations. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region II, for review and approval, the name and qualifications of the consultant it proposes to conduct the assessment and audits. The consultant shall be independent of the Licensee's staff and have experience in the management and implementation of a radiation safety program, including activities similar to those authorized by the License.
- C. Within 60 days of the date of NRC approval of the consultant selection,

as described above, the Licensee shall have the consultant submit its assessment report to the Licensee and to the Regional Administrator, NRC Region II. Within 30 days of the end of each quarterly audit period, the Licensee shall have the consultant submit its audit report and any recommendations for improvements to the Licensee and to the Regional Administrator, NRC Region II. The assessment and audits of the Licensee's radiography program shall include, but not be limited to:

- I. A review of the adequacy of the Licensee's management control and oversight in ensuring that radiographer and equipment requirements, personnel monitoring requirements, radiation safety procedures in radiographic operations, and other NRC requirements are followed including:
 - (a) the Licensee's program for training, retraining, and qualifying all individuals involved in using, supervising, inspecting, and auditing activities involving NRC-licensed material;
 - (b) the scope, methods, and frequency of the Licensee's program of surveillance and audits to determine compliance by individual users of NRC-licensed materials with NRC requirements, the conditions of the License, and the Licensee's own procedures for the safe use of radioactive materials;
 - (c) the RSO's functions and oversight activities, including the methods of monitoring the radiation safety program to ensure

that problems or violations are promptly identified and corrected; and

- (d) the Licensee's radiation safety program for developing and implementing operating and emergency procedures for the safe use of NRC-licensed material, and record keeping and documentation.

- 2. On-site reviews at the Licensee's Lorton, Virginia, office of activities and records maintained for users, and interviews and observations of selected authorized users working at various locations.
- 3. Direct observation during each quarterly audit of, at a minimum, one radiographer employed at the Lorton, Virginia, office performing industrial radiography activities with NRC-licensed material. The audits should ensure that all radiographers at the Lorton, Virginia, office are observed within the year.

- D. Within 30 days of the date of the initial assessment report and of each quarterly audit report, the Licensee shall submit to the Regional Administrator, NRC Region II, the Licensee's response to the report either describing the implementation of each of the necessary corrective actions or recommendations from the audit report, or justification for not needing any corrective action or for not adopting one or more of the specific recommendations. Each Licensee response shall include a status report on action items completed or to be completed with appropriate

priorities assigned and any schedules for, or dates of, completion of each specific item.

- E. The Licensee shall ensure that the work of the radiographer involved in the November 15, 1994 violations, as a radiographer using NRC-licensed material, is audited by the independent consultant within 30 days of the radiographer's return to unsupervised work and quarterly thereafter for one year. All audits shall include direct observation of the radiographer performing industrial radiography with NRC-licensed material.

- F. For a period of one year from the date of this Order, the Licensee shall notify NRC Region II, by 9:00 a.m. (Eastern Time) Monday (or Tuesday, if Monday is a federal Holiday) of each week, of the location in non-Agreement states where the radiographer involved in the November 15, 1994 violations will be conducting radiography operations. This notification shall include the date, time, and specific location where radiography is planned to allow NRC to conduct an unannounced inspection. If unplanned work arises after the Monday notification, the new work can be performed by the involved radiographer in a non-Agreement state provided that the NRC has been given prior notice. Notification shall be made by telephone to Mr. Douglas M. Collins, Chief, Nuclear Materials Safety and Safeguards Branch, or his designated representative, at (404) 331-5586 or by facsimile at (404) 331-5559.

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

V

In accordance with 10 CFR 2.202, the Licensee 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 set forth the matters of fact and law on which the Licensee 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, 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, Suite 2900, Atlanta, Georgia 30323, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee 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 the Licensee 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), the Licensee, 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 9th day of February 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199
May 17, 1995

EA Nos. 94-244 and 95-003

Material Testing Laboratories, Inc.
ATTN: Mr. Peter H. Lorsong
Operations Manager
1531 Early Street
Norfolk, Virginia 23502-1603

SUBJECT: NOTICE TO RESCIND ORDER MODIFYING LICENSE AND ACKNOWLEDGE RESPONSE
TO NOTICE OF VIOLATION (NRC INSPECTION REPORT 45-17151-01/94-02)

Dear Mr. Lorsong:

Thank you for your responses of February 15 and March 16, 1995, to our Notice of Violation issued on February 9, 1995. We have evaluated your corrective actions and found that they meet the requirements of 10 CFR 2.201. We acknowledge receipt of your payment of the civil penalty in the amount of \$7,500. We will examine the implementation of your corrective actions during future inspections.

The Order Modifying License (Order) issued on February 9, 1995, required certain actions be taken regarding your Lorton, Virginia office and oversight of the radiographer who was involved in the violations. In your response of February 15, 1995, you stated that the Lorton, Virginia office was closed prior to receiving the Order and that the radiographer involved in the violations was no longer employed by Material Testing Laboratories.

Based on the information provided in your response, we have determined that the conditions of the Order are no longer necessary. Therefore, all conditions of the Order are hereby rescinded. Nevertheless, we are still concerned that adequate oversight be provided for any new branch office you open from which licensed activities are performed. Consequently, as D. J. Collins of my staff discussed with you on March 16, 1995, we have incorporated into Amendment 17 to your license your commitment, made in your letter dated May 3, 1995, to notify NRC Region II at least 30 days prior to opening any new branch offices.

We appreciate your cooperation on this matter.

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No. 030-12279
License No. 45-17151-01

cc: Commonwealth of Virginia
State of Maryland

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

January 10, 1995

EA 94-208

Nuclear Scanning Services, Inc.
ATTN: Gregory D. Fox
President
2437 Bay Area Blvd., Suite 297
Houston, Texas 77058

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$2,800
(Investigation Report No. 4-93-040R)

This refers to an investigation of Nuclear Scanning Services, Inc. (NSS) conducted by the NRC's Office of Investigations (OI) and completed September 1994. The investigation focused on NSS' use of NRC-licensed radioactive material in states under NRC jurisdiction. Based on the results of the investigation, an enforcement conference with NSS was conducted on November 22, 1994, in the NRC's Arlington, Texas office. A list of enforcement conference participants is enclosed.

NRC's investigation found that you, as President and Radiation Safety Officer of NSS, made a deliberate decision to violate the requirement to submit an NRC Form 241 in accordance with Title 10, Code of Federal Regulations, Part 150.20 (10 CFR 150.20) when you performed services using nuclear gauges at various industrial facilities in Ohio and Michigan in 1993 and 1994. You admitted that you knew there was a requirement to notify the NRC prior to performing these services but that you decided not to notify NRC because you were concerned that competitors might obtain and use the information on the NRC Form 241 which should have been submitted to the NRC to solicit your customers.

As discussed at the transcribed enforcement conference with you, the NRC relies on the submission of NRC Form 241 as the notification from Agreement State licensees to ensure that the appropriate state licenses are held and to conduct inspections to ensure that NRC's radiation safety requirements are being followed. The NRC considers the failure to notify NRC through submission of NRC Form 241 a significant regulatory concern. This failure denies NRC an opportunity to conduct inspections of licensed activities to ensure compliance with NRC requirements. In this case, the violation is more serious because it was deliberate. The NRC must rely on the integrity and candor of persons performing NRC-licensed activities. NRC licensees are expected to comply with all requirements. Thus, in accordance with Section IV.C of the "General Statement of Policy and Procedure for NRC Enforcement Action," (Enforcement Policy), 10 CFR Part 2, Appendix C, this violation has been classified at Severity Level II.

To emphasize the significance of a deliberate violation of NRC requirements and the importance of properly notifying the NRC when licensed activities are going to be performed in NRC jurisdiction, I have been authorized after consultation with the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$2,800 for the Severity Level II violation described in the Notice (Enclosure 1).

The base value of a civil penalty for a Severity Level II violation is \$800. The civil penalty adjustment factors in Section VI.B.2 of the Enforcement Policy were considered as follows: (1) NRC identified the violation and, therefore, 50 percent escalation was warranted; and (2) multiple occurrences of the violation were identified and, thus, 100 percent escalation was warranted. The remaining adjustment factors were considered but resulted in no further adjustments. In addition, to assure that the penalty more appropriately conveys the NRC's concern that you, as the president and Radiation Safety Officer of NSS, made a conscious decision to violate NRC requirements, the NRC exercised discretion, as provided in Section VII.A(1) of the Enforcement Policy, by increasing the amount of the penalty by an additional 100 percent of the base civil penalty. Therefore, on balance, the base civil penalty was escalated by 250 percent to \$2,800.

In addition to the enclosed Notice, the NRC is issuing a Notice of Violation to you as an individual for your deliberate actions which caused NSS to be in violation of NRC requirements. Section VIII of the Enforcement Policy states, in part, that "more serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as the facility licensee." The Commission's regulations at 10 CFR 30.10 provide, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes 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, and that any person who violates these requirements may be subject to enforcement action including prohibition from NRC-licensed activities.

You should be aware that the NRC gave serious consideration to issuing an order suspending NSS' authority to conduct NRC-licensed activities in areas under NRC jurisdiction and, as discussed in Section VIII of the Enforcement Policy, to prohibiting your individual involvement in NRC-licensed activities for one or more years. However, NRC has not done so after taking into consideration the specific circumstances in this case. The staff has decided not to issue an order to the company at this time based upon the corrective actions you stated have been taken at the transcribed enforcement conference which include filing of NRC Form 241 as required and review of the NRC requirements. Future violations of NRC requirements by NSS or employees of NSS may result in more significant enforcement action. The NRC expects full compliance with all applicable NRC requirements and deliberate violation of such requirements will not be tolerated.

During the transcribed enforcement conference, you asked whether certain

information discussed during the enforcement conference as well as the information that you are required to provide on an NRC Form 241 could be considered proprietary and withheld from disclosure. The NRC's regulations allow for such information to be requested to be withheld from disclosure provided that the person seeking such an exemption follows the requirements of 10 CFR 2.790(b)(1), a copy of which is enclosed. Please note, however, that the NRC will make this determination in each case in accordance with 10 CFR 2.790(b)(4).

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 the Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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

The responses directed by this letter and the enclosed Notices are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

Sincerely,

L. J. Callan
Regional Administrator

Docket No. 150-00042
Texas License No. L04339

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty - \$2,800 (EA 94-208)
2. Notice of Violation Issued to the President of Nuclear Scanning Services, Inc.
3. Enforcement Conference Participants
4. 10 CFR 2.790

cc w/enclosures: State of Texas Radiation Control Program Director

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Scanning Services, Inc.
Houston, Texas

Docket No. 150-00042
Texas License No. LO4339
EA 94-208

During an NRC investigation completed in September 1994, a deliberate 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 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States under the general license provided in 10 CFR 150.20(a) must at least three days before engaging in each activity, file four copies of Form-241, "Report of Proposed Activities in Non-Agreement States," and four copies of its Agreement State specific license with the Regional Administrator of the U.S. NRC Regional Office for the Region in which the Agreement State that issued the license is located.

Contrary to the above, Nuclear Scanning Services, Inc., engaged in NRC-licensed activities in non-Agreement states, specifically, in Detroit, Michigan, on July 29 and August 20, 1993, and in Toledo, Ohio, on August 21 and December 13, 1993, and February 15, 1994, and failed to file a Form 241 prior to engaging in these activities.

This is a Severity Level II violation (Supplement VI).
Civil Penalty - \$2,800

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

Notice of Violation

- 2 -

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 234(c) of the Act, 42 U.S.C. 2282(c).

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: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738, 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 10th day of January 1995

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

MAR 16 1989

Docket Nos. 030-05980, 030-05982, 030-05981
030-08335, and 030-08444
License Nos. 37-00030-02, 37-00030-07E, 37-00030-08,
37-00030-09G, and 37-00030-10G
EA 89-29

Safety Light Corporation
ATTN: Jack Miller, President
4150-A Old Berwick Road
Bloomsburg, Pennsylvania 17815

Gentlemen:

Subject: ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY) AND
DEMAND FOR INFORMATION

Enclosed is an Order Modifying Licenses (Effective Immediately) requiring certain activities, including the preparation and implementation of a plan for both site characterization and decontamination of the Bloomsburg facility. In addition, enclosed is a Demand for Information requiring corporate officials from the successor corporations of U.S. Radium Corp. to submit certain information. We recognize that this information may have proprietary value. Therefore, should any corporation submitting information pursuant to this Order desire that such information not be made public, it should follow the procedures set forth in 10 CFR 2.790. In accordance with that regulation, a copy of this letter and the enclosed Order will be placed in the NRC's Public Document Room.

The responses directed by the accompanying Order are not subject to the clearance of the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

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

Enclosures:

1. Order Modifying License
and Demand for Information
2. Environmental Evaluation of the
Safety Light Corporation Site,
Bloomsburg, PA

cc: Geoffrey L. Beauchamp, Esq.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

MAR 16 1989

Docket Nos. 030-05980, 030-05982, 030-05981
030-08335, and 030-08444
License Nos. 37-00030-02, 37-00030-07E, 37-00030-08,
37-00030-09G, and 37-00030-10G
EA 89-29

United States Radium Corporation
USR Industries, Inc.
USR Lighting, Inc.
USR Chemical, Inc.
USR Metals, Inc.
USR Natural Resources, Inc.
Lime Ridge Industries, Inc.
Metreal, Inc.
Pinnacle Petroleum, Inc.
ATTN: Ralph T. McElvenny, Chairman
550 Post Oak Blvd, Suite 550
Houston, Texas 77027

Gentlemen:

Subject: ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY) AND
DEMAND FOR INFORMATION

Enclosed is an Order Modifying Licenses (Effective Immediately) requiring certain activities, including the preparation and implementation of a plan for both site characterization and decontamination of the Bloomsburg facility. In addition, enclosed is a Demand for Information requiring corporate officials from the successor corporations of U.S. Radium Corp. to submit certain information. We recognize that this information may have proprietary value. Therefore, should any corporation submitting information pursuant to this Order desire that such information not be made public, it should follow the procedures set forth in 10 CFR 2.790. In accordance with that regulation, a copy of this letter and the enclosed Order will be placed in the NRC's Public Document Room.

The responses directed by the accompanying Order are not subject to the clearance of the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

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

See next page for encls.
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Safety Light Corporation
United States Radium Corporation
USR Industries, Inc.
USR Lighting, Inc.
USR Chemical, Inc.
USR Metals, Inc.
USR Natural Resources, Inc.
Lime Ridge Industries, Inc.
Metreal, Inc.;
Pinnacle Petroleum, Inc.
and all other successor
corporations to either USR
Industries or U.S. Radium Corp.
(herein referred to as the
Corporations)

Docket Nos. 030-05980
030-05982
030-05981
030-08335
030-08444

License Nos. 37-00030-02
37-00030-08
37-00030-07E
37-00030-09G
37-00030-10G

EA 89-29

ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY)
AND DEMAND FOR INFORMATION

I

Safety Light Corporation (Safety Light) is the named licensee on Byproduct Material License Nos. 37-00030-02, 37-00030-08, 37-00030-07E, 37-00030-09G, and 37-00030-10G, issued by the Nuclear Regulatory Commission (NRC).

License No. 37-00030-02 authorizes the possession, storage, and use of any byproduct material for purposes of decontamination, cleanup, and disposal of equipment and facilities previously used for manufacturing, research and development in operations performed at the facility located at 4150-A Old Berwick Rd., Bloomsburg, PA (the Bloomsburg facility). License No. 37-00030-02 was originally issued on June 20, 1956 and was last renewed on January 25, 1979. This license has been under timely renewal since February 29, 1984.

License No. 37-00030-08 authorizes the licensee to conduct research and development and to manufacture various devices containing tritium. License No. 37-00030-08 was originally issued on August 5, 1969, and was last renewed on

January 6, 1983. This license has been under timely renewal since December 31, 1987. The above licenses permit use of material only at facilities at 4150-A Old Berwick Road, Bloomsburg, Pennsylvania (the Bloomsburg facility).

License No. 37-00030-07E authorizes the distribution of timepieces, hands and dials to which luminous paint containing tritium is applied, to persons exempt from NRC licensing pursuant to 10 CFR 30.15. License No. 37-00030-07E was originally issued on April 16, 1965 and was last renewed on May 27, 1986. This license expires on April 30, 1991.

License No. 37-00030-09G authorizes the distribution of luminous devices containing tritium to persons generally licensed pursuant to 10 CFR 31.5. License No. 37-00030-09G was originally issued on January 13, 1966 and was last renewed on October 24, 1983. This license has been under timely renewal since October 31, 1988.

License No. 37-00030-10G authorizes the distribution of sealed self-luminous sources to persons generally licensed pursuant to 10 CFR 31.7. License No. 37-00030-10G was originally issued on December 13, 1971 and was last renewed on April 22, 1985. This license expires on April 30, 1990.

II

On January 21, 1981, the NRC received notification that the NRC licensee known as United States Radium Corporation (U.S. Radium), the prior licensee on all of the above licenses, had changed its name to Safety Light Corporation.

There was no indication at that time that the change involved any ownership or organizational changes. Consequently, routine administrative license amendments changing the corporate name from U.S. Radium Corporation to Safety Light Corporation were issued on March 31, 1982 to modify License No. 37-00030-08; and on January 20, 1983 to modify License Nos. 37-00030-02, 37-00030-07E, 37-00030-09G, and 37-00030-10G.

III

As early as 1983, the NRC sought clarification from Safety Light concerning corporate transactions that potentially could affect cleanup responsibility. Specifically, the letter that transmitted NRC Inspection Report 83-01, dated September 22, 1983, sought clarification, based upon inspections at the Bloomsburg facility, of the effects of an apparent corporate transfer of licensed activity. Safety Light's November 11, 1983 response to the request in the September 22, 1983 letter appears both incomplete and misleading in that it is silent on the details of the May 16, 1980 Agreement and Plan of Merger between U.S. Radium Corporation and USR Industries, Inc. and a July 11, 1980 U.S. Radium letter to its stockholders ("the 1980 Plan"). In its response, Safety Light refers back to the administrative name change processed in response to its January 21, 1981 submittal and affirmatively states that there were no organizational changes made due to the name change.

Since that time, the NRC has obtained and reviewed the 1980 plan. Based upon a review of the 1980 Plan, it now appears U.S. Radium merged with USR Industries, Inc. (Industries). It specifically appears that the former NRC

licensee known as U.S. Radium Corporation, through its officers and directors, had also created the new corporation, known as USR Industries, Inc. After merging with Industries, the former U.S. Radium became a wholly-owned subsidiary of Industries, and then changed the name of the segregated NRC activities to Safety Light Corporation. Industries also transferred all its non-licensed assets and business to five other newly created corporations (USR Lighting, Inc.; USR Chemicals, Inc.; USR Metals, Inc.; Metreal, Inc.; and USR Natural Resources, Inc.), then wholly owned subsidiaries of USR Industries. Pinnacle Petroleum, Inc. is apparently another subsidiary of Industries. Thereafter, Safety Light Corporation, which had the activities authorized by NRC, was sold to Lime Ridge Industries, Incorporated, a corporation created by former employees of Industries and U.S. Radium.

IV

Neither prior notice to the NRC was given, nor NRC approval obtained, regarding the 1980 restructuring and subsequent sale or the full circumstances of the transfer of the NRC license, in violation of Section 184 of the Atomic Energy Act and 10 CFR 30.34(b), which prohibit the transfer of a license, either directly or indirectly, unless the NRC, after securing full information, gives its consent in writing. It further appears from the 1980 Plan that these corporate transactions were a deliberate attempt to isolate the liability and responsibility for cleanup of the Bloomsburg facility (discussed below) from other, presumably more profitable, aspects of U.S. Radium's, and later Industries', business ventures.

Neither U.S. Radium, USR Industries, nor any of their successor corporations or subsidiaries can avoid responsibility and liability for the cleanup of the Bloomsburg facility through the unlawful transfer of an NRC license, i.e., a transfer without the consent of the NRC, after full disclosure. Therefore, each of the corporations referred to in the caption of this Order ("Corporations") is, and remains, jointly and severally liable and responsible for the cleanup of the Bloomsburg facility and for the conduct of all other activities on that site that require an NRC license.

On April 20, 1988, following renewed concerns with cleanup issues at the site, the NRC again sought clarification of the relationships among the various corporations with apparent interests in the Bloomsburg facility and the role that each would play in the cleanup of that site. In stark contrast to the January 21, 1981 and November 11, 1983 submittals, Industries' June 24, 1988 response concedes that the name change was made concurrently with a corporate reorganization, although even the June 24, 1988 response fails to state that one purpose of the reorganization apparently was to limit liability, as stated in the July 11, 1980 U.S. Radium letter to its stockholders. Consequently, Safety Light's January 21, 1981, November 11, 1981, and June 24, 1988 submissions to the NRC were incomplete and inaccurate in material respects.

V

In addition to the foregoing, the soil and groundwater at the Bloomsburg facility have become radioactively contaminated as a result of past operations at the

facility. The principal radionuclides are tritium, strontium-90 and radium-226. The levels exceed NRC limits that would permit unrestricted access to the site. Tritium has also been detected in groundwater off-site in the well of a nearby house. Although the tritium in that well is not yet above drinking water limits set by the U.S. Environmental Protection Agency, further off-site contamination is likely to occur over time due to the movement of groundwater and soil erosion. Pits on the site contain unknown types and quantities of radioactive material that pose a potential threat to the health and safety of employees and any others on the site. Access to the site by the public is not restricted and members of the public have been and may be present. Therefore, access needs to be restricted and decontamination of the facility and real estate is required and must commence immediately.

VI

Prior to the numerous transactions set forth above, on January 25, 1979, the NRC amended License No. 37-00030-02 to include License Condition 14 to require a nine-month plan for implementing specified decontamination activities submitted earlier in a U.S. Radium letter dated October 23, 1978. This letter also stated that a schedule would be developed for decontamination activities beyond the activities specified in the decontamination plan. Condition 13 of License No. 37-00030-02 required U.S. Radium to provide the NRC with a report on the status of decontamination efforts and a schedule of work for 12 month periods beginning July 1, 1979. The NRC's inspection of the Bloomsburg facilities on November 12, 1986 and the site contamination survey provided in a letter to the NRC dated February 6, 1987 indicate that the specified decontamination activities were not performed. Furthermore, while Safety Light has provided a report of

environmental monitoring each year since 1983, Safety Light has not provided the NRC with the required report on the status of decontamination efforts and schedule of work since License Condition 13 was added to the license.

As a result, by letter dated April 20, 1988, Safety Light, Industries, and all other apparent successor corporations to U.S. Radium were requested to provide a decommissioning plan for the site which would permit the release of the site for unrestricted use. This decommissioning plan was to provide for a final radiological survey that would include all areas where licensed material has been used, stored, or buried. The decontamination of the site was permitted to be gradual, extending over a period of ten years, but was to commence within twelve months.

No substantive responses were made to these requests for a plan. By now, the NRC would have expected to have observed action to satisfy the foregoing license conditions. On July 8, 1988, the NRC inspected the Bloomsburg facility and confirmed that there was no current effort underway to decontaminate the facility. This failure to commence the required decontamination constitutes a willful violation of an NRC requirement. As stated above, the NRC considers all corporate successors of U.S. Radium jointly and severally liable for site cleanup and all other activities requiring a license.

Under the terms of Conditions 13 and 14 of License No. 37-00030-02, as well as the NRC's April 20, 1988 letter, these corporations were put on clear notice that decontamination was necessary and required, and were given ample opportunity to submit proposed milestones and plans for decontamination. Rather

than formulate and implement a decommissioning plan in response to the 1979 license conditions, it now appears U. S. Radium reorganized in a deliberate attempt to limit liability and responsibility for cleanup. Despite repeated efforts by the NRC to get U. S. Radium and its successors, including but not limited to Safety Light, to take steps to initiate meaningful decontamination efforts at the Bloomsburg facility, these steps have not been taken. The presence of considerable known contamination, coupled with the uncertain extent of that and other, as yet unknown, contamination requires that action be taken immediately to survey, stabilize, and clean up the site.

In order to ensure that the Corporations provide adequate resources to evaluate, plan, and implement decontamination efforts with proper radiological safety procedures, I have determined that specific decontamination requirements and milestones are necessary and that decontamination needs to begin expeditiously so as to minimize any threat to public health and safety. As a result of the failure of U.S. Radium and its successors to comply with Section 184 of the Atomic Energy Act and 10 CFR 30.34(b), the successor corporations remain subject to the jurisdiction of the NRC. In view of the corporations' apparently willful failure to fully meet the terms of Section 184 of the Atomic Energy Act and 10 CFR 30.34(b), as well as other conditions in the license, though given opportunity to do so, and their incomplete and inaccurate statements to the NRC, and in view of the need to expeditiously begin decontamination to minimize any threat to public health and safety, I have determined that the NRC lacks reasonable assurance that site characterization and decontamination of the Bloomsburg facility will be initiated and completed in an orderly and timely fashion to ensure that the health and safety of the public, including current

employees and adjoining landowners, will be protected. This is particularly so in light of the apparent financial inability of any one successor corporation to U. S. Radium to clean up the Bloomsburg facility. Accordingly, the public health, safety and interest require that the actions specified by Section VII of this Order commence immediately. For these reasons and pursuant to 10 CFR 2.204, no prior notice is required, and this Order is immediately effective.

VII

In view of the foregoing, and pursuant to Sections 81, 161b, 161c, 161i, 161o, 182, 184 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 32, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. 37-00030-02, -08, -07E, -C9G and -10G ARE MODIFIED AS FOLLOWS:

- A. Within 90 days from the date of this Order, Safety Light Corporation shall post the premises as required by 10 CFR Part 20 and shall control access to all contaminated areas at the Bloomsburg facility by a fence or other suitable means so as to create a restricted area, as defined in 10 CFR Part 20.
- B. Within 45 days from the date of this Order, all Corporations shall jointly submit, to the Regional Administrator, NRC, Region I, for his review and approval, a joint plan to characterize the radioactivity at the Bloomsburg site. The plan shall describe in detail how a complete radiological and geohydrological survey of all facilities and of the surrounding surface

and subsurface soil and groundwater will be conducted in order to fully determine the radionuclide concentrations and their lateral and depth profiles, as well as their movement in the groundwater and soil. The surveys shall be sufficient to develop a complete plan for decontamination/removal operations necessary to permit unrestricted access to the site. The plan shall include, but not be limited to, provisions to address the issues contained in the 1988 NRC Environmental Evaluation of the Safety Light Corporation Site, Bloomsburg, Pennsylvania. Particular attention shall be given to identifying areas of the site that should be given priority in the site decontamination activities. The joint plan shall provide a schedule, with milestones, for completion of the site characterization within 180 days. The plan shall specify the amount of funds that each of the Corporations is to provide for implementation of the plan. Any corporation that does not agree with the joint plan may submit an individual plan, with a statement explaining the reasons for disagreement with the joint plan. A corporate officer, not lower than the President, from each of the Corporations shall certify, under oath or affirmation, to the accuracy of the information contained in the site characterization plan and to the intent on behalf of the corporation to implement the plan.

- C. Within 180 days from the date the Regional Administrator approves the site characterization plan required by Section VII.B. of this Order, all Corporations shall jointly submit, to the Regional Administrator, NRC, Region I, for his review and approval, a single report that contains a complete radiological characterization of the site, with a description of the location and level of all sources of radiation and contamination, including non-

radiological hazards. A corporate officer, not lower than the President, for each of the Corporations shall certify, under oath or affirmation, to the accuracy of the information contained in the site characterization report.

- D. Within 30 days from the date the Regional Administrator approves the site characterization report required by Section VII.C. of this Order, all Corporations shall jointly submit to the Regional Administrator, NRC, Region I, for his review and approval, a single decontamination plan with a timetable for specific decontamination activities (milestones) and transfer of contaminated waste. The plan shall include the rationale for the priorities established and specify the amount of funds that each of the Corporations is to provide for implementation of the plan. Any Corporation that does not agree with the joint plan may submit an individual plan, with a statement explaining the reasons for disagreement with the joint plan. A corporate official, not lower than the President, from each of the Corporations shall certify, under oath or affirmation, to the accuracy of the decontamination plan, and to the intent on behalf of the Corporation to implement the plan.
- E. Following the Regional Administrator's approval of the decontamination plan required by Section VII.D. of this Order, a corporate officer, not lower than the President, from each of the Corporations shall submit, within 15 days of the end of each calendar quarter, a status report, under oath or affirmation, to the Regional Administrator of NRC, Region I, stating:

1. The progress that has been made toward carrying out the decontamination plan during the previous calendar quarter. In the event that a milestone set forth in the decontamination plan submitted in response to Section VII.D. is not met during the period covered by the report, the report shall indicate: (1) the date by which the milestone is expected to be accomplished; (2) the reason for the failure to meet the milestone; and (3) the impact that the failure to meet the milestone will have on the decontamination plan and schedule;
2. The actions under the decontamination plan that are expected to be accomplished within the next calendar quarter; and,
3. The financial resources available during the period covered by the report, including but not limited to revenue, costs and expenses, net losses or profits, and sums expended on decontamination of the Bloomsburg facility.

F. No Corporation named herein shall either abandon or transfer the Bloomsburg facility, until the NRC has confirmed that a successful decontamination of the Bloomsburg facility has been completed.

VIII

The licensee, the Corporations, or any person adversely affected by this Order may request a hearing within 30 days of the date of its issuance. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document

Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, Office of the General Counsel, 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 by the licensee or the Corporations, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained. If a person other than the licensee or the Corporations requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or request for hearing shall not stay the immediate effectiveness of this Order. Upon the failure of the licensee or other Corporations herein named to answer or request a hearing within the time specified, this Order shall be final without further proceedings.

IX

Further information is needed to determine whether the Commission can have reasonable assurance that future activities at the Bloomsburg facility can be conducted in accordance with the Commission's requirements and the terms of this Order.

Accordingly, to determine whether the licenses should be further modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, within 30 days from the date of this Order, a corporate official, not lower than the President, for each of the Corporations shall state in writing, under oath or affirmation, or where appropriate submit,

pursuant to Sections 161c and 182 of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30 and 32, answers to the following DEMAND FOR INFORMATION:

- A. Describe the extent to which the decontamination of the Bloomsburg facility was considered, if at all, and by whom, in determining the nature of the reorganizations and transfers discussed in this Order.
- B. Copies of all contracts, agreements, deeds, or other instruments of conveyance, between any of the Corporations or individuals concerning responsibility for cleanup of the Bloomsburg site.
- C. For each Corporation, copies of all annual financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the three years prior to this Order.
- D. For each Corporation, copies of all quarterly financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the four quarters prior to this Order.
- E. For each Corporation, copies of all annual Federal tax returns for the three tax years prior to this Order.
- F. A listing of the names of all individuals or corporations owning at least 10% of the stock in any Corporation, indicating each owner's address, the number of shares owned, and the total number of shares outstanding.

X

The Regional Administrator of NRC Region I may, in writing, relax or rescind any provision of this Order or Demand for Information upon the showing, in writing, of good cause.

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 6th day of March 1989

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

AUG 21 1989

Docket Nos. 030-05980, 030-05981
030-05982, 030-08336, and
030-08444

License Nos. 37-00030-02, 37-00030-07E,
37-00030-08, 37-00030-09G, and
37-00030-10G

EA 89-29

Safety Light Corporation
Lime Ridge Industries, Inc.
Metreal, Inc.
ATTN: Jack Miller, President
4150-A Old Berwick Road
Bloomsburg, Pennsylvania 17815

Gentlemen:

Subject: ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY)

Enclosed is an Order Modifying Licenses (Effective Immediately) requiring you to establish funding for implementation of a site characterization plan of the Bloomsburg facility and for taking necessary immediate remedial actions for any significant health and safety problems that might be identified during site characterization. This Order has been issued to assure that funds are promptly set aside for these purposes. The NRC believes it necessary to issue this Order in light of the limited financial resources available to Safety Light Corporation, U.S. Radium Corporation, USR Industries, Inc., and their successor corporations and subsidiaries to ensure that the Corporations characterize the type and extent of radioactive contamination of the Bloomsburg site and take necessary remedial actions. This Order is one part of the NRC actions deemed necessary to ensure a timely and orderly decontamination of the site. Willful failure to comply with the terms of the Order may result in further civil action or referral to the Department of Justice for possible criminal prosecution.

In accordance with Section 2.790 of the NRC's Rules of Practice, Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed Order will be placed in the NRC's Public Document Room.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Safety Light Corp., et al.

- 2 -

The responses directed by the accompanying Order are not subject to the clearance procedures of the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

A handwritten signature in cursive script, 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: Order Modifying Licenses (Effective Immediately)

cc: Geoffrey L. Beauchamp, Esq.

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

AUG 21 1989

Docket Nos. 030-05980, 030-05981
030-05982, 030-08336, and
030-08444

License Nos. 37-00030-02, 37-00030-07E,
37-00030-08, 37-00030-09G, and
37-00030-10G

EA 89-29

United States Radium Corporation
USR Industries, Inc.
USR Lighting, Inc.
USR Chemical, Inc.
USR Metals, Inc.
USR Natural Resources, Inc.
ATTN: Ralph T. McElvenny, Chairman
550 Post Oak Blvd., Suite 550
Houston, Texas 77027

Gentlemen:

Subject: ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY)

Enclosed is an Order Modifying Licenses (Effective Immediately) requiring you to establish funding for implementation of a site characterization plan of the Bloomsburg facility and for taking necessary immediate remedial actions for any significant health and safety problems that might be identified during site characterization. This Order has been issued to assure that funds are promptly set aside for these purposes. The NRC believes it necessary to issue this Order in light of the apparently weak financial condition of Safety Light Corporation, U.S. Radium Corporation, USR Industries, Inc., and their successor corporations and subsidiaries to ensure that the Corporations characterize the type and extent of radioactive contamination of the Bloomsburg site and take necessary remedial actions. This Order is one part of the NRC actions deemed necessary to ensure a timely and orderly decontamination of the site. Willful failure to comply with the terms of the Order may result in further civil action or referral to the Department of Justice for possible criminal prosecution.

In accordance with Section 2.790 of the NRC's Rules of Practice, Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed Order will be placed in the NRC's Public Document Room.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

United States Radium Corp, et al. - 2 -

The responses directed by the accompanying Order are not subject to the clearance procedures of the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

A handwritten signature in cursive script, 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: Order Modifying Licenses (Effective Immediately)

cc: A. Patrick Nucciarone, Esq.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Safety Light Corporation	)	
United States Radium Corporation	)	
USR Industries, Inc.	)	
USR Lighting, Inc.	)	Docket Nos.: 030-05980
USR Chemical, Inc.	)	030-05982
USR Metals, Inc.	)	030-05981
USR Natural Resources, Inc.	)	030-08335
Lime Ridge Industries, Inc.	)	030-08444
Metreal, Inc.;	)	License Nos.: 37-00030-02
and all other successor	)	37-00030-08
corporations to either USR	)	37-00030-07E
Industries or U. S. Radium Corp.	)	37-00030-09G
(herein referred to as the	)	37-00030-10G
Corporations)	)	

EA 89-29

ORDER MODIFYING LICENSES (EFFECTIVE IMMEDIATELY)

I

Safety Light Corporation (Safety Light) is the named licensee on Byproduct Material License Nos. 37-00030-02, 37-00030-08, 37-00030-07E, 37-00030-09G, and 37-00030-10G, issued by the Nuclear Regulatory Commission (NRC).

License No. 37-00030-02 authorizes the possession, storage, and use of any byproduct material for purposes of decontamination, cleanup, and disposal of equipment and facilities previously used for manufacturing, research and development in operations performed at the facility located at 4150-A Old Berwick Rd., Bloomsburg, PA (the Bloomsburg facility). License No. 37-00030-02 was originally issued on June 20, 1956 and was last renewed on January 25, 1979. This license has been under timely renewal since February 29, 1984.

License No. 37-00030-08 authorizes the licensee to conduct research and development and to manufacture various devices containing tritium. License No. 37-00030-08 was originally issued on August 5, 1969, and was last renewed on January 6, 1983. This license has been under timely renewal since December 31, 1987. The above licenses permit use of material only at facilities at 4150-A Old Berwick Road, Bloomsburg, Pennsylvania.

License No. 37-00030-07E authorizes the distribution of timepieces, hands and dials to which luminous paint containing tritium has been applied, to persons exempt from NRC licensing pursuant to 10 C.F.R. § 30.15. License No. 37-00030-07E was originally issued on April 16, 1965 and was last renewed on May 27, 1986. This license expires on April 30, 1991.

License No. 37-00030-09G authorizes the distribution of luminous devices containing tritium to persons generally licensed pursuant to 10 C.F.R. § 31.5. License No. 37-00030-09G was originally issued on January 13, 1966 and was last renewed on October 24, 1983. This license has been under timely renewal since October 31, 1988.

License No. 37-00030-10G authorizes the distribution of sealed self-luminous sources to persons generally licensed pursuant to 10 C.F.R. § 31.7. License No. 37-00030-10G was originally issued on December 13, 1971 and was last renewed on April 22, 1985. This license expires on April 30, 1990.

II

The buildings, soil and groundwater at the Bloomsburg facility, collectively hereafter referred to as the Bloomsburg facility or facility, have become radioactively contaminated as a result of past operations at the facility. The known principal radionuclides contaminating the facility are tritium, strontium-90 (Sr-90), cesium-137 and radium-226. The levels of radioactivity exceed those that would permit unrestricted access to the facility. Tritium has also been detected in groundwater off-site in the well of a nearby house. Although the tritium in that well is not yet above drinking water limits set by the U.S. Environmental Protection Agency, further off-site contamination is likely to occur over time due to the movement of groundwater and soil erosion. Pits at the facility contain unknown types and quantities of radioactive material that pose a potential threat to the health and safety of employees and others at the facility.

III

To ensure that the Corporations would characterize the type and extent of radioactive contamination at the Bloomsburg facility, and plan and implement an orderly and timely decontamination of the facility, an Order Modifying Licenses (Effective Immediately) and Demand for Information was issued by the NRC on March 16, 1989 to the Corporations. This Order required the preparation of plans for site characterization and decontamination and specified, as part of the required site characterization plan, that "the plan shall specify the amount of funds that each of the Corporations is to provide for implementation of the plan" (Section VII.B of the Order).

In two letters dated April 17, 1989, the Corporations filed answers to the March 16, 1989 Order. On June 2, 1989, after receiving an extension of time to comply with the requirement of the Order to submit a characterization plan for the site, the Corporations submitted a Joint Characterization Plan (JCP) prepared by IT Corporation for providing a radiological assessment of the Bloomsburg facility. The NRC reviewed the plan and found that it did not satisfy the terms of the Order in a number of significant respects, which were described in a letter from the NRC to the Corporations dated June 16, 1989. The NRC informed the Corporations that they were in apparent violation of the Order, and described the actions that might follow as a result of this failure to comply with the terms of the Order. Among the many apparent violations of the Order, the NRC noted in its June 16, 1989 letter that the Corporations had failed to specify funding as required by Section VII.B of the Order.

The other apparent violations of the Order included: (1) the failure to describe a complete radiological and geohydrological survey of all facilities and of the surrounding surface and subsurface soil and groundwater to determine radionuclide concentrations and their lateral and depth profiles, as well as their movement in the groundwater; (2) the failure to provide for the characterization of the source of tritium contamination and for the radioactive source term, and for assessment of contaminant transport in the groundwater; (3) the failure to address the assessment of the extent to which lagoons and drainage canals are actively releasing contaminants to the environment; (4) the failure to address the characteristics of the sources of radiological contamination which may exist off-site, in general, or on the adjacent property, in particular; (5) the failure to address the assessment of the extent and rate of the off-site transport of contaminated groundwater; and (6) the failure to describe the actions that will

be taken to determine whether Sr-90 and other radioactive nuclides besides tritium have also been transported off-site in groundwater.

Subsequently, the NRC held an Enforcement Conference with the Corporations on July 6, 1989. At that conference, the NRC informed the Corporations that the JCP failed to comply with the requirements of the March 16, 1989 Order. With respect to the financial aspects of the JCP, the Corporations made it clear that the JCP submitted on June 2, 1989, was intended to determine if there are any immediate health effects and reflected the Corporations' limited financial capability. The Corporations indicated that implementation of the June 2, 1989 JCP was estimated to cost \$116,000 and that implementation of the characterization plan required by the Order would cost about \$1,000,000. The Corporations reiterated their limited financial condition in a letter to the NRC dated July 14, 1989 and stated that approximately \$115,000 was the total amount of funds available for site characterization. The NRC has independently estimated the cost of implementation of the site characterization plan which meets the requirements of the March 16, 1989 Order and has determined that \$1,000,000 (plus or minus 30%) is a reasonable estimate. Based upon information provided to the NRC by the Corporations, it appears that the net income of Safety Light Corporation is approximately \$200,000 per year and USR Industries is presently running a deficit. Assets of USR Industries appear to be approximately \$5,000,000, some of which may be encumbered. The President of USR Industries indicated a willingness to sell an interest in a building in Houston, Texas, to raise funds to accomplish the JCP proposed by the Corporations.

By letter dated August 10, 1989, the Corporations submitted a site characterization plan prepared by IT Corporation. The August 10th plan was stated to meet the

intent of NRC's Order of March 16, 1989. While this plan described certain planning, implementation, reporting, scheduling, and quality assurance activities, the plan failed to provide any indications related to the funding to implement the plan, as required by the March 16, 1989 Order and as indicated previously in the NRC's letter dated June 16, 1989. By letter dated August 17, 1989, Safety Light Corporation certified that it committed to jointly fund the plan with USR Industries, et. al. up to a total of \$115,000, of which Safety Light will fund fifty percent, with the balance required for implementation of the plan being sought from their insurance carriers. By certification dated August 18, 1989, USR Industries, Inc. and its wholly owned subsidiaries certified that they intend to fund the plan up to 50 percent of projected total cost of \$115,000 and to the extent practicable seek the balance of funds from their respective insurance carriers. These certifications are inadequate to provide assurance that the required site characterization plan, which is estimated to cost approximately \$1,000,000 will be funded. The continued failure to assure adequate funding to complete implementation of a site characterization plan which satisfies the March 16th Order is a significant concern to the NRC. The NRC's assessment of the technical adequacy of the plan will be described in future correspondence.

IV

The Corporations' failure to provide assurance of adequate funding to complete implementation of a satisfactory site characterization plan, the uncertainty regarding the nature and extent of contamination at the Bloomsburg facility, and the statements made by the Corporations' principal officers as to the limited financial resources available for site characterization, let alone decontamination, demonstrate that additional actions are immediately needed to

protect public health and safety by assuring that sufficient resources are made available by the Corporations to initiate and complete the site characterization and take necessary immediate remedial action for any significant health and safety problems. Based on the above, I have determined, pursuant to 10 C.F.R. § 2.204, that the public health, safety, and interest require that this Order be made immediately effective.

V

In view of the foregoing, and 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 C.F.R. § 2.204 and 10 C.F.R. Parts 30 and 32, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. 37-00030-02, -08, -07E, -09G, and -10G ARE MODIFIED AS FOLLOWS:

- A. The Corporations shall establish a trust pursuant to a trust agreement as specified below and, within 30 days of the date of this Order, shall submit an originally signed duplicate of the trust agreement to the Regional Administrator, NRC Region I (hereafter referred to as Regional Administrator);
- B. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency;
- C. The Corporations:
 - 1. Shall make payments into the trust fund on or before the dates specified in the following schedule:

<u>Date:</u>	<u>Deposit Required</u>
October 2, 1989	\$ 50,000
November 1, 1989	50,000
December 1, 1989	50,000
January 2, 1990	50,000
February 1, 1990	100,000
March 1, 1990	100,000
April 2, 1990	100,000
May 1, 1990	100,000
June 1, 1990	100,000
July 2, 1990	100,000
August 1, 1990	100,000
September 4, 1990	100,000
	<u>\$1,000,000</u>

The Corporations shall be jointly and severally responsible for satisfying this payment schedule;

2. Shall, within 7 days of a payment scheduled under Section V.C.1 above, certify to the Regional Administrator, under oath or affirmation, that the payment has been made as required;
3. May accelerate payments into the trust fund or may deposit the full amount specified above at the time the fund is established. However, they must maintain the value of the fund at no less than the value that the fund would have if the payments were made as specified above;
4. Will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee, or a suspension or revocation of the authority of the trustee institution to act as trustee, and must establish a new trust that meets the requirements given below within 60 days after such an event.

D. The trust agreement shall provide that:

1. The Corporations shall be the Grantors of the trust;
2. The Grantors shall establish the trust to provide assurance that funds will be available to implement an NRC-approved plan to characterize the type and extent of the radioactive contamination at the Bloomsburg facility and to take immediate remedial action at any time such action is necessary;
3. The Grantors shall designate an identified individual, who is a responsible corporate officer, as the Grantors' authorized representative, and two alternates;
4. The Grantors or the Grantors' authorized representative shall, with written approval from the Regional Administrator, select a contractor to implement the site characterization plan, which contractor will be the beneficiary of the trust, and which may be replaced by the Grantors on reasonable notice, with written approval from the Regional Administrator;
5. The Grantors or the Grantors' authorized representative shall have the option of selecting one or more additional contractors to plan or implement remedial action at the facility, or both, with written approval from the Regional Administrator, which contractors would be additional beneficiaries of the trust, and which may be replaced by the Grantors on reasonable notice, with written approval from the Regional Administrator;

6. The Trustee shall make disbursements from the trust fund to the beneficiary or beneficiaries as the Grantors or the Grantors' authorized representative shall direct in writing, with written approval of the Regional Administrator for disbursements exceeding \$5,000, or as the Regional Administrator shall direct in writing;
7. The Grantors' payments of principal into the trust fund shall consist of cash, but may also consist of short-term obligations of the United States government or other property as the Regional Administrator shall approve in writing;
8. The Trustee shall invest and reinvest the principal and income of the trust fund, including interest earned, and keep the trust fund invested, without distinction between principal and income, in accordance with the following provisions: the Trustee shall hold the trust fund in demand deposits that earn interest and are insured by an agency of the United States government or in short-term obligations of the United States government, provided, however, that the Trustee may hold cash awaiting investment or distribution for a reasonable time (approximately five working days) without liability for the payment of interest;
9. The Trustee shall: (1) within seven days after the end of each month beginning with October 1989, provide to the Regional Administrator a summary of the disbursements made during the past month to include: the date of disbursement, amount of disbursement, party receiving disbursement, and purpose of or activity accomplished by disbursement; and (2) within seven days after the end of each quarter beginning

October 2, 1989, furnish to the Regional Administrator a summary accounting statement of the trust fund for the past quarter, to include: amounts paid into the trust fund, disbursements from the trust fund, interest earned, and the current value of the trust fund;

10. The Trustee may resign, or the Grantors may replace the Trustee, but such resignation or replacement shall not be effective until (1) the Grantors notify the Regional Administrator in writing that the Grantors have appointed a successor trustee and that the successor trustee has accepted the appointment; (2) the Regional Administrator approves the appointment; and (3) the successor trustee assumes administration of the trust;
11. The Trustee shall implement orders, requests, and instructions only if they are in writing and signed by either the Grantors or the Grantors' authorized representative, with a copy to the Regional Administrator, or if they are in writing and signed by the Regional Administrator;
12. The Trustee shall notify the Grantors and the Regional Administrator, by certified mail, within seven days following the expiration of the seven day period after each month following the establishment of the Trust, if no payment is received from the Grantors during that period;
13. The trust agreement may be amended by an instrument in writing executed by the Grantors and the Trustee, with the written approval of the Regional Administrator, or by the Trustee and the Regional Administrator if the Grantors cease to exist;

14. The Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantors, the Trustee and the Regional Administrator, or by the Trustee and the Regional Administrator if the Grantors cease to exist;
 15. Wherever the trust agreement refers to the Regional Administrator, it shall also be deemed to refer to the Regional Administrator's designee or the NRC Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support or his designee.
- E. Should the Corporations' total payments into the trust fund (\$1,000,000) be insufficient to fund implementation of the site characterization plan or to take necessary immediate remedial action and the trust fund be exhausted, the Regional Administrator may, at his discretion, and in writing, require the Grantors to make additional payments totalling no more than \$300,000 into the trust fund.

The Regional Administrator or the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, may, in writing, relax, rescind, or modify any provision of this Order upon the showing by the Corporations, in writing, of good cause. This authority includes, but is not limited to, the authority to extend deadlines and to permit the establishment of separate trust funds with good cause shown, so long as the Corporations otherwise satisfy the requirements of this Order.

VI

The Corporations or any person adversely affected by this Order may request a hearing within 20 days of the date of its issuance. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, 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 by the Corporations, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained. If a person other than the Corporations requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 C.F.R. § 2.714(d). AN ANSWER TO THIS ORDER OR REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER. Upon the failure of the Corporations herein named to answer or request a hearing within the time specified, this Order shall be final without further 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 21st day of August 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
LBP-94-41
USNRC

ATOMIC SAFETY AND LICENSING BOARD

94 DEC 28 P3:05

Before Administrative Judges:

Thomas S. Moore, Chairman
Frederick J. Shon
James H. Carpenter

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERIALIZED DEC 26 1994

In the Matter of

SAFETY LIGHT CORPORATION,
et al.

(Bloomsburg Site
Decontamination,
Decommissioning,
License Renewal Denials,
and Transfer of Assets)

Docket Nos. 030-05980-OM
030-05981-OM
030-05982-OM
030-08335-OM
030-08444-OM
030-05980-OM2
030-05981-OM2
030-05982-OM2
030-08335-OM2
030-08444-OM2
030-05980-ML
030-05982-ML
030-05980-ML2
030-05982-ML2
030-05980-EA
030-05982-EA

ASLBP Nos. 89-590-01-OM
90-598-01-OM2
92-659-01-ML
92-664-02-ML2
93-675-04-EA

December 28, 1994

ORDER
(APPROVING SETTLEMENT
AGREEMENT AND TERMINATING PROCEEDINGS)

On September 20, 1994, the NRC Staff; Safety Light Corporation ("SLC"); Metreal, Inc.; and USR Industries, Inc., USR Lighting Products, Inc., USR Chemical Products, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc. ("USR Companies"), filed a joint motion for approval of a

ATTACHMENT (1)

settlement agreement in the five pending Safety Light proceedings. Thereafter, on October 18, 1994, we held a brief hearing on the parties' joint motion and the proposed settlement agreement. At the hearing, the parties requested that we withhold final action on the joint motion until all outstanding matters relating to the Trust Agreement referenced in the Settlement Agreement had been resolved. On December 22, 1994, Staff counsel informed us that the Trust Agreement had been executed.

Upon consideration of the joint motion and the proffered settlement agreement, we find that the settlement agreement comports fully with the public interest. See 10 C.F.R. § 2.203. Accordingly, we approve the attached settlement agreement and incorporate its terms into this order with the following minor amendments agreed to by the parties:

- 1) In line 7 of numbered paragraph 7, the date "May 31, 1995" should be amended to read "September 30, 1995."
- 2) In the second sentence of numbered paragraph 8, the portion of the sentence beginning with the word "unless" should be amended to read "unless otherwise prohibited by law or court order."
- 3) In numbered paragraph 9, subparagraph (a), line 13, the word "February" should be amended to read "March."

4) In numbered paragraph 14, the language inside the parentheses should be amended to read "(except as modified by the letters referenced in Footnote 6 above)."

Further, the request of SLC and the USR Companies to withdraw their requests for hearing on the Staff's orders of March 16, 1989, August 21, 1989, and January 29, 1993, and their request that they be dismissed as parties to the proceedings on those orders is granted. The proceedings on these three Staff orders are hereby dismissed with prejudice.

In view of the Staff's rescission of its denial of SLC's applications to renew License Nos. 37-00030-02 and 37-00030-08 ("the 02 and 08 Licenses"), the Staff's rescission of its decommissioning order of February 7, 1992, and the Staff's commitment to renew the 02 and 08 Licenses for a five-year period following the issuance of this order, the request of SLC and the USR Companies to withdraw their requests for hearing on the license renewal denials and the February 7, 1992 decommissioning order is granted. The proceedings on the license renewal denials and the decommissioning order are hereby dismissed with prejudice.

Finally, the parties are directed to revise the dates specified in the settlement agreement so that the monthly obligations of SLC and USR Industries will commence on the first day of the month immediately following the date of this order. The parties are also directed to revise the

five-year license renewal period specified in the agreement to commence on the first business day of the month immediately following the date of this order.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Thomas S. Moore
ADMINISTRATIVE JUDGE

Frederick J. Shon
ADMINISTRATIVE JUDGE

James H. Carpenter
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 28, 1994

SETTLEMENT AGREEMENT

THIS AGREEMENT is made by and between Safety Light Corporation ("SLC"); USR Industries, Inc., USR Lighting, Inc., USR Chemical Products, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc. (the "USR Companies"); Metreal, Inc.;¹ and the Staff of the United States Nuclear Regulatory Commission ("NRC Staff" or "Staff"), to wit:

WHEREAS SLC is the named licensee on Byproduct Material License Nos. 37-00030-02 (the "-02 License"), 37-00030-08 (the "-08 License"), 37-00030-09G, and 37-00030-10G, issued by the NRC, which licenses authorize the possession and use of byproduct material at SLC's facility located at 4150-A Old Berwick Road, Bloomsburg, PA 17815 (the "Bloomsburg facility" or "Bloomsburg site"); and

WHEREAS the -02 License, as amended on August 5, 1969, authorizes the possession, storage, and use of any byproduct material for purposes of decontamination, clean-up, and disposal of equipment and facilities previously used for research, development, manufacturing, and processing at the Bloomsburg site, which license was last renewed on January 25, 1979, and which license has been under timely renewal since February 29, 1984; and

¹ SLC, the USR Companies, United States Radium Corporation, Lime Ridge Industries, Inc., and Metreal, Inc. are collectively referred to herein as the "Respondents"; however, the parties recognize that United States Radium Corporation and Lime Ridge Industries, Inc. have ceased to exist as corporate entities.

ATTACHMENT (2)

WHEREAS the -08 License authorizes research and development activities and the manufacture of various devices containing tritium, which license was last renewed on January 6, 1983, and which license has been under timely renewal since December 31, 1987; and

WHEREAS on March 16, 1989, the Staff issued an Order to the Respondents, requiring them, *inter alia*, to control access to the Bloomsburg site, prepare and implement a site characterization plan, and prepare and implement a site decontamination plan, due to the presence of radiological contamination in the soil, ground-water, buildings and equipment at the Bloomsburg facility;² and

WHEREAS on August 21, 1989, the Staff issued a second Order, requiring the Respondents, *inter alia*, to set up a trust fund and to deposit \$1,000,000 into that fund according to a specified schedule to cover the cost of implementing a site characterization plan and of taking necessary immediate actions to remediate any significant health and safety problems that might be identified during site characterization;³ and

WHEREAS on February 7, 1992, the Staff denied the applications submitted by SLC to renew the -02 License and the -08 License, based on the Staff's determination that the Respondents had failed to comply with the Commission's regulations requiring financial

² "Order Modifying Licenses (Effective Immediately) and Demand for Information," dated March 16, 1989, at 5-6, 54 Fed. Reg. 12035 (March 23, 1989).

³ "Order Modifying Licenses (Effective Immediately)," dated August 21, 1989, at 6-12, 54 Fed. Reg. 36078 (Aug. 31, 1989).

assurance for decommissioning funding as set forth in 10 C.F.R. § 30.35;⁴ and

WHEREAS also on February 7, 1992, the Staff issued an Order requiring the Respondents, *inter alia*, to decommission the Bloomsburg site in accordance with the requirements of 10 C.F.R. § 30.36 and the schedule and criteria provided with that Order, so that the site may be released for unrestricted use;⁵ and

WHEREAS on January 29, 1993, the Staff issued an Order which, *inter alia*, prohibited SLC from implementing its Asset Purchase Agreement of January 4, 1993, prohibited SLC from implementing any transfer of major assets other than in the normal course of business for full fair value, and required SLC to set aside in a separate account any and all funds which it received or may receive under the above-mentioned Asset Purchase Agreement;⁶ and

WHEREAS SLC and/or the USR Companies have requested a hearing on each and every one of the Staff's Orders and license renewal

⁴ Letter from Robert M. Bernero (Director, Office of Nuclear Material Safety and Safeguards), to Jack Miller (President, Safety Light Corporation), et al., dated February 7, 1992.

⁵ "Order Establishing Criteria and Schedule for Decommissioning the Bloomsburg site," dated February 7, 1992, at 6, 57 Fed. Reg. 6136 (Feb. 20, 1992).

⁶ "Order to Safety Light Corporation Prohibiting the Transfer of Assets and Requiring the Preservation of the Status Quo (Effective Immediately) and Demand for Information," dated January 29, 1993, 58 Fed. Reg. 7268 (Feb. 5, 1993). See also, (1) letter from Robert M. Bernero to C. Richter White, dated May 20, 1993, authorizing return of the purchase money deposit to Shield Source, Inc. (SSI) upon rescission of the January 4, 1993, Asset Purchase Agreement (APA), and (2) letter from C. R. White to Robert M. Bernero, dated May 21, 1993, rescinding the APA and informing the NRC that SLC is returning the deposit money to SSI.

denials described above, in response to which proceedings have been convened and remain pending before a Licensing Board at this time; and

WHEREAS the undersigned parties recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of some or all of the matters now pending in litigation between them, including, without limitation, the completion of a radiological characterization study of the Bloomsburg site, the dedication and expenditure of certain funds for the purposes specified herein, the elimination of further litigation expenses, uncertainty and delay, and other tangible and intangible benefits, which the parties recognize and believe to be in the public interest;

IT IS NOW, THEREFORE, AGREED AS FOLLOWS:

1. The Staff hereby agrees, as set forth in Paragraph 9 below, (a) to rescind its denial of SLC's applications to renew the -02 and -08 Licenses, and to grant a renewal of those licenses for a period of five years (until August 31, 1999), upon SLC's satisfaction of the Respondent(s)' obligations with respect to all outstanding fees and charges that have been assessed or levied by the NRC, and (b) in connection with the issuance of said renewal, to issue an exemption from the requirements of 10 C.F.R. §§ 30.32(h) and 30.35 limited to the five-year renewal period, in accordance with the following provisions.

2. SLC and the USR Companies hereby agree that during the five-year renewal period, they will (a) set aside from operating

revenues (or any source other than their insurance litigation, any judgments or settlements they may receive with respect thereto, or amounts they may receive as a result of any claims they may have against agencies or departments of the U. S. Government), certain sums as set forth in Paragraph 3 below, to be paid on the first day of each successive month commencing September 1, 1994 (for a total of \$396,000), to be used for the purposes specified in Paragraph 17 below, (b) complete a site characterization study, to be performed by Monserco Limited ("Monserco"), a Canadian corporation, or any other company selected by SLC and approved by the Staff, which adequately describes the nature, extent, quantities, and location of the contamination present at the Bloomsburg site in accordance with an approved site characterization plan, as set forth in Paragraph 7 herein, (c) vigorously pursue their claims in any present or future insurance litigation pertaining to the Bloomsburg site, and any other claims against third parties which they may believe themselves to have, the proceeds of which are to be set aside in accordance with the terms of this Agreement as set forth below, and submit quarterly reports to the NRC Staff describing in detail the progress and accomplishments achieved in that litigation during each preceding 90-day period.

3. Pursuant to Paragraph 2 herein, SLC and the USR Companies agree to set aside and deposit the following sums in an escrow account or trust fund approved by the NRC Staff, in accordance with the following schedule:

(a) SLC

September 1, 1994, and on the
first day of each month
thereafter, for 24 months \$5,000

September 1, 1996, and on the
first day of each month
thereafter, for 24 months \$6,000

September 1, 1998, and on the
first day of each month
thereafter, for 12 months \$7,000

(For a total of \$348,000)

(b) The USR Companies

September 1, 1994, and on the
first day of each month
thereafter, for 48 months \$1,000

(For a total of \$48,000)

In connection herewith, it is expressly understood and agreed that the financial contributions specified herein do not in any manner represent or reflect the NRC Staff's view of the Respondents' respective responsibility or liability for the Bloomsburg site, the contamination present there, or the NRC licenses issued with respect thereto, nor do they represent or reflect any admission by the USR Companies of NRC jurisdiction over the USR Companies, as set forth in Paragraphs 10 and 15 herein.

4. It is expressly understood and agreed that no further renewal of the -02 License or the -08 License beyond the five-year renewal period will be issued, unless the Respondents, or any of them, have, in addition to demonstrating compliance with all other applicable requirements, first submitted a decommissioning funding plan, including financial assurance for decommissioning, which

complies with the requirements of 10 C.F.R. § 30.35 to the satisfaction of the NRC Staff, or have obtained a further exemption from the requirements of that regulation. The failure to submit such a decommissioning funding plan to the satisfaction of the NRC Staff or to obtain a further exemption will result in expiration, revocation or suspension of the -02 and -08 Licenses as of August 31, 1999, and will cause the requirements of 10 C.F.R. § 30.36 to apply.

5. SLC agrees to be responsible for undertaking all necessary and proper radiation safety precautions, or assuring that such precautions are taken, and to implement an adequate radiation safety program during the performance of the site characterization study, regardless of whether that study is performed by SLC or a third party acting under contract to SLC.

6. SLC has submitted to the Staff for its review and approval, a plan for a site characterization study, developed by Monserco, to determine the nature, extent, quantities, and location of the contamination present at the Bloomsburg site, which plan, as revised in written communications between the parties, has been approved by the Staff. SLC represents that it and Monserco have contracted for the performance of a site characterization study consistent with the aforesaid plan, contingent upon the Licensing Board's approval of this Agreement, and it is further understood and agreed that SLC and the USR Companies hereby consent to the use of funds previously set aside from the proceeds of their insurance litigation in Princeton Bank and Trust Company, Custodial Account

44-01-000-8690771, up to a maximum of \$450,000, as may be necessary to complete the site characterization study.

7. SLC agrees that it will undertake to conduct the aforesaid site characterization study, to be performed by Monserco or any other company selected by SLC and approved by the Staff, sufficient to determine the nature, extent, quantities, and location of the contamination present at the Bloomsburg site, which study it agrees to complete and submit for NRC Staff approval on or before May 31, 1995, and thereafter to promptly modify or supplement that study in accordance with any Staff requests, comments or conclusions, so long as the cost of such modified or supplemental studies, together with the original study, does not exceed \$450,000 plus any sums set aside pursuant to Paragraphs 3 and 8 herein.

8. SLC and the USR Companies agree to use their best efforts to set aside and deposit in a trust fund or escrow account, as set forth in Paragraph 16 below, from the proceeds of their insurance litigation and claims against third parties, as specified herein, realized during the five-year license renewal period and the subsequent decommissioning period, including any judgments or settlements pertaining thereto (after deduction of legal fees and expenses directly related to such litigation), a percentage equal to 25% of such amounts, or any larger percentage of such amounts as may be specified in said judgments or settlements to pertain to the Bloomsburg site. Notwithstanding anything to the contrary which may be contained in this Agreement, it is further understood and

agreed that SLC and the USR Companies shall deposit and set aside said 25¢ or other portion of such proceeds unless prohibited from doing so by the insurers or other parties to such litigation or claims.

9. The parties agree that, as an integral part of this Agreement, they will take the following actions with respect to the adjudicatory proceedings now pending before the Licensing Board:

(a) Upon execution of this Agreement, and subject to its approval by the Licensing Board, (1) SLC and the USR Companies will withdraw their requests for hearing on the Staff's Orders of March 16, 1989, August 21, 1989, and January 29, 1993, and request that they be dismissed as parties in the proceedings pertaining to those Orders, and (2) the parties will file a joint request for dismissal of the proceedings on those Orders, with prejudice, it being understood and agreed that the parties shall oppose any vacation of the prior rulings and decisions on jurisdiction entered in these proceedings, and it being further understood and agreed that this Agreement resolves all outstanding issues with respect to the Staff's Orders of February and August 1989, and the Staff will take no enforcement or other action against SLC and the USR Companies in connection with those Orders;⁷

⁷ The parties recognize that, following execution of this Agreement and its approval by the Licensing Board, the USR Companies may seek to reach a separate agreement with the NRC Solicitor's Office, whereby the USR Companies and the NRC would stipulate to the withdrawal of those Companies' Petitions for Review filed in Appeal Nos. 89-1638 and 90-1407 in the U.S. Court (continued...)

(b) Also upon execution of this Agreement, and subject to its approval by the Licensing Board, (1) the Staff will rescind its license renewal denials and decommissioning order of February 7, 1992, (2) SLC and the USR Companies will withdraw their requests for hearing on the license renewal denials and the Staff's decommissioning order of February 7, 1992; and (3) the parties will file a joint request that the Licensing Board dismiss, with prejudice, all matters pertaining to the denials and decommissioning order of February 7, 1992; and

(c) Also upon execution of this Agreement, and subject to its approval by the Licensing Board, the Staff will grant a renewal of the -02 and -08 Licenses as set forth in Paragraph 1.

10. It is understood and agreed that, notwithstanding any other provision in this Agreement, following execution of this Agreement, SLC and the USR Companies will pursue no other litigation or claim in connection with any Staff Order or other action referenced herein, and it is further understood and agreed that the USR Companies hereby agree not to contest the NRC's jurisdiction to take enforcement or other actions with respect to the terms of this Agreement, provided, however, that nothing

⁷(...continued)
of Appeals (D.C. Circuit) without prejudice to the re-filing of such Petitions within 90 days after completion of the five-year license renewal period. However, the parties agree that whether or not such actions are taken does not affect the validity and finality of this Settlement Agreement.

contained in this Agreement shall be understood or construed to otherwise preclude, prejudice or restrict the USR Companies' right to challenge the NRC's jurisdiction to take enforcement actions against them as to other matters.

11. SLC and the USR Companies hereby agree to waive any and all rights or opportunity they may have to request a hearing in the event that the Respondents fail to demonstrate compliance with 10 C.F.R. § 30.35 to the satisfaction of the NRC Staff by the conclusion of the five-year renewal period, or in the event that SLC or the USR Companies fail to make monthly payments in the manner and at the times set forth herein or to otherwise comply with any of the foregoing requirements which the Director of the Office of Nuclear Material Safety and Safeguards may determine in his sole discretion to be a material breach of this Agreement, or in the event that the Staff declines to renew the -02 and -08 Licenses after the five-year renewal period due to SLC's non-compliance with 10 C.F.R. § 30.35, or in the event the Staff determines to deny any further request for exemption from the requirements of 10 C.F.R. § 30.35. In this regard, it is explicitly understood and agreed that the Staff's determination of compliance or non-compliance with 10 C.F.R. § 30.35, and its determination whether to grant or deny any further request for exemption from 10 C.F.R. § 30.35, shall be binding for all purposes, and SLC and the USR Companies hereby agree that such Staff determination shall not be the subject of any request for hearing or adjudicatory review. It is further understood and

agreed, however, that if the Staff determines to deny any renewal application for reasons other than a failure to comply with the requirements of 10 C.F.R. § 30.35, the Respondents shall have the right to request a hearing with respect to such determination on grounds other than whether they have complied with 10 C.F.R. § 30.35, prior to the effective date of such Staff action, in accordance with the Commission's Rules of Practice in 10 C.F.R. Part 2.

12. It is further understood and agreed that in the event the Staff determines at the conclusion of the five-year renewal period that the Respondents have failed to demonstrate compliance with 10 C.F.R. § 30.35, as set forth in Paragraph 4 above, and that any further request for exemption from 10 C.F.R. § 30.35 should be denied, the Respondents shall not be eligible for any further renewal of the -02 and -08 Licenses, and they shall thenceforth be obligated to satisfy the provisions in 10 C.F.R. § 30.36 ("[e]xpiration and termination of licenses"), provided, however, that the USR Companies reserve the right to contest the NRC's jurisdiction to compel the USR Companies to comply with 10 C.F.R. § 30.36.

13. In the event the Director of the Office of Nuclear Material Safety and Safeguards determines, in his sole discretion, that the Respondents have acted, or failed to act, in a manner which constitutes a material breach of this Agreement, or that the Respondents have failed to demonstrate compliance with 10 C.F.R. § 30.35 upon the conclusion of the five-year renewal

period and that no further exemption from 10 C.F.R. § 30.35 should be granted, in addition to the requirements of 10 C.F.R. § 30.36, SLC and the USR Companies hereby agree (a) not to contest any decommissioning order which the Staff may then issue (provided that any such order does not contain terms which are more restrictive or burdensome than those contained in the decommissioning order of February 7, 1992 and/or any NRC regulations which may then be in place), (b) to comply with any requirement which the Staff may then issue that they safely remove or dispose of all radioactive materials and devices which may be present at the Bloomsburg site, and (c) to maintain the existing perimeter fence and warning signs, as set forth in Paragraphs 17 and 18 below, provided, however, that nothing contained in this Agreement shall be understood or construed to preclude, prejudice or restrict the USR Companies' right to challenge the NRC's jurisdiction with respect to those Companies in the future, as stated above in Paragraph 10.

14. The provisions of the Staff's Order of January 29, 1993, are expressly incorporated herein by reference and SLC hereby agrees to comply with the requirements of that Order (except as discussed in Footnote 6 above), unless and until such time as it is relieved of such obligations, in writing, by the NRC Staff.

15. It is understood and agreed that the USR Companies reserve the right to challenge the NRC's jurisdiction as to those companies, should they so desire (except as to their obligations under this Agreement), in any appropriate forum, notwithstanding the terms of any provision in this Agreement, as stated above in

Paragraph 10. It is further understood and agreed that the Staff does not waive or relinquish its claim of NRC jurisdiction as to those companies, notwithstanding the terms of any provision in this Agreement.

16. SLC and the USR Companies hereby agree that any and all funds required to be set aside pursuant to this Agreement shall be set aside and maintained in an interest-bearing trust fund or escrow account to be established and governed in accordance with the Staff's guidance, in the form attached hereto. It is further agreed that no money deposited in this fund, and no interest earned thereon, shall be committed or spent without prior written approval of the Staff, during and after the five-year renewal period specified herein.

17. SLC and the USR Companies further agree that any and all funds required to be set aside pursuant to this Agreement shall be used exclusively for purposes of site decontamination, cleanup, decommissioning, satisfaction of 10 C.F.R. § 30.36, maintenance of the perimeter fence and warning signs, and such other measures as are appropriate and necessary to protect the public health and safety and are approved in advance, in writing, by the Staff. In addition, such funds may be used to pay for any additional costs required for completion of the site characterization study referred to herein, in the event and to the extent that such costs may exceed the cost of the study agreed to in advance by the parties hereto pursuant to Paragraph 6 herein. To the extent that any funds remain after the completion of decommissioning and such other

uses as specified herein, such funds shall be returned to the control of SLC and the USR Companies.

18. SLC hereby agrees to maintain the perimeter fence and warnings signs posted at the Bloomsburg site throughout the renewal period and for a period of ten (10) years thereafter, or until termination of the license with an NRC determination that the site can be released for unrestricted use, whichever occurs first.

19. SLC and the USR Companies hereby agree that they shall neither abandon nor transfer the Bloomsburg facility or any major equipment or assets located at the Bloomsburg site without prior written approval by the NRC Staff, which approval shall not be unreasonably withheld.

20. It is expressly understood and agreed that nothing contained in this Agreement shall relieve the Respondent(s) from complying with all applicable NRC regulations and the terms and conditions of the -02 and -08 Licenses during the renewal period, and, further, that nothing contained in this Agreement shall be binding on, or preclude lawful action by, any other Government agency or department.

21. SLC and the USR Companies hereby agree that any failure on their part to complete the site characterization study described above, to make the monthly payments described above when due (or within five days thereafter) or to comply with any other provision contained in this Agreement will constitute a material breach of this Agreement. Further, SLC and the USR Companies hereby agree that any such breach, or any failure to demonstrate compliance with

10 C.F.R. § 30.35 to the satisfaction of the Staff prior to expiration of the five-year renewal period specified herein, will result in the immediate expiration, revocation or suspension of the Licenses, effective immediately, without any right to or opportunity for hearing in connection therewith, provided, however, that the Staff hereby agrees that it will not revoke, suspend or declare an expiration of the Licenses in the event that any such breach involves solely a failure by the USR Companies to make monthly payments as required herein (in which case it is understood and agreed that the Staff may take such other legal actions against the USR Companies as the Staff may then deem to be appropriate including, without limitation, the right to resort immediately to a court of law in a collection action, and the USR Companies hereby waive any right they may have to seek an administrative remedy in connection therewith). In this regard, SLC and the USR Companies further consent to the entry of a Judgment providing (a) that the license expiration, revocation, suspension, or license renewal denials and any decommissioning order which the Staff may issue upon expiration, revocation or suspension of the Licenses (if such order does not contain terms which are more restrictive or burdensome than those contained in the decommissioning order of February 7, 1992, and/or any NRC regulations which may then be in place) shall be deemed to be immediately effective in such event, with no right to or opportunity for hearing in connection therewith, subject only to the USR Companies' right to contest the NRC's jurisdiction over those Companies as set forth in

Paragraphs 10 and 15 herein, and (b) that any amounts required hereunder, whether deposited or undeposited in the trust fund or escrow account established pursuant to this Agreement, or otherwise unpaid as specified herein, shall be due and payable immediately in the event of a material breach hereof (except that amounts required to be paid by SLC shall not be due and payable immediately in the event of a breach by the USSR Companies alone), and shall be treated as funds set aside to partially satisfy regulatory requirements established by the U. S. Nuclear Regulatory Commission to protect the health and safety of the public from an ongoing and continuing threat.

22. It is understood and agreed that this Agreement is contingent upon (a) notification of SLC by the Staff that it has completed its review of and is prepared to act favorably upon SLC's license renewal application, consistent with the terms of this Agreement, and (b) prior approval by the Atomic Safety and Licensing Board.

23. This Agreement shall be binding upon the heirs, legal representatives, successors and assigns of the corporate entities that are parties hereto.

IN WITNESS WHEREOF, we set our hand and seal this ____ day of
August, 1994.

For Safety Light Corporation,
and Metreal, Inc.:

/s/ C. Richter White 10/16/94

C. Richter White, President

For USR Industries, Inc.,
USR Metals, Inc.,
USR Chemical Products, Inc.,
USR Lighting, Inc., and
U.S. Natural Resources, Inc.:

/s/ Ralph T. McElvenny, Jr.

Ralph T. McElvenny, Jr., Chairman

For the NRC Staff:

/s/ Robert M. Bernero 10/14/94

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Attachment: Form of Trust

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

December 13, 1994

EA 94-219

Johnson Yokogawa Corporation
ATTN: Mr. B. Schmitz
General Manager for Operations
4 Dart Road
Newnan, Georgia 30265

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$10,000
(NRC INSPECTION REPORT NO. 150-00010/94-02)

Dear Mr. Schmitz:

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Mr. H. Bermudez of this office on October 6, 1994, and subsequent records reviews through November 1, 1994. The inspection included a review of activities at your Newnan, Georgia facility authorized under a general license issued under 10 CFR 150.20. 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 November 10, 1994. An enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on November 28, 1994 to discuss the violation, its cause, and your corrective actions to preclude recurrence. A list of enforcement conference attendees and a copy of the NRC presentation notes are enclosed.

The violations described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) involved (1) the failure to provide the NRC prior notification of the conduct of licensed activities in areas of NRC jurisdiction and (2) the performance of unauthorized activities in areas of NRC jurisdiction. Specifically, on February 7-9, 1994, you performed maintenance on a sulfur-in-oil analyzer containing 550 millicuries of americium-241 at a facility licensed under NRC jurisdiction located in Marcus Hook, Pennsylvania, and had not filed four copies of NRC Form 241 and your Agreement State license with the appropriate NRC office at least three days prior to engaging in such activity. In addition, on December 1-3, 1992, and July 13-16, 1993, you used byproduct material at facilities located in Wisconsin and Puerto Rico, respectively, areas of NRC jurisdiction, without an NRC specific or general license. The root cause of the problem was the lack of understanding on the part of your staff of the limitations of your Georgia license and NRC reciprocity requirements. A strong contributor to this lack of understanding was inadequate oversight of licensed activities by Johnson Yokogawa management. Failure to adequately communicate the requirements of your license to your staff after you were advised by the State of Georgia of the limitations of your license also contributed to the violation.

The violations in the enclosed Notice are cause for significant regulatory concern because your failure to obtain the appropriate license for the activities conducted and the failure to notify the NRC of the conduct of licensed activities precluded the NRC from planning inspections in order to fulfill our responsibilities to ensure that activities are carried out in

accordance with NRC requirements and with due regard for employee and public health. 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 focus your attention on the need to understand and comply with federal requirements related to the licensing of radioactive materials.

The NRC understands that your corrective actions for the violations included providing notifications to your customers regarding possible unauthorized maintenance of the devices, reviewing the reciprocity requirements and amending your license to allow you to perform installation, maintenance and relocation of the analyzers. You also committed to train customers only on the basic aspects of the use of the devices and stress in the training that only an authorized user can conduct activities involving installation, maintenance and relocation of the devices.

To emphasize the importance of compliance with federal requirements when performing work in areas under federal jurisdiction, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the amount of \$10,000 for the Severity Level III problem. The base value of a civil penalty for an industrial user of radioactive material for a Severity Level III problem is \$5,000.

The civil penalty was adjusted for the factors in Section VI.B.2 of the Enforcement Policy as follows. Because the problem was identified by the NRC, escalation of 50 percent was applied for the factor of identification. Mitigation of 50 percent was applied for your comprehensive corrective actions. The base civil penalty was escalated 100 percent for the factor of prior opportunity to identify since the State of Illinois issued a violation to you that was similar to Violation A on December 14, 1992 and you were notified by the State of Georgia of license limitations in December 1992. In addition, you stated that when you used byproduct material in facilities located in Wisconsin and Puerto Rico on December 1-3, 1992, and July 13-16, 1993 you believed that you could perform these activities under your customers' licenses. However, you did not review your customers' licenses, which you had in your possession, to determine whether the activities performed were allowed under the customers' licenses. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the base civil penalty has been escalated by 100 percent.

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

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

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

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

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

Sincerely,

Stewart D. Ebner
Regional Administrator

Docket No.: General License
(10 CFR 150.20)
License No.: 150-00010
EA 94-219

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

cc w/encls:

State of Georgia
State of Wisconsin
Commonwealth of Puerto Rico
State of Pennsylvania

Mr. John Shea, President
Puerto Rico Sun Oil Company
P. O. Box 186
Yabucoa, PR 00767

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Johnson Yokogawa Corporation
Newnan, Georgia

Docket No. 150-00010
General License (10 CFR 150.20)
EA 94-219

During an NRC inspection conducted on October 6, 1994 and records reviews conducted through November 1, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3 requires, in part, that no person possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

Contrary to the above, on December 1-3, 1992, and July 13-16, 1993, the licensee possessed and used byproduct material in facilities located in Wisconsin and Puerto Rico, respectively, areas of NRC jurisdiction, without an NRC specific or general license.

- B. 10 CFR 150.20(a) provides that persons who hold a specific license from an Agreement State are granted an NRC general license to conduct the same activity in NRC jurisdiction provided, in part, that the licensee complies with 10 CFR 150.20(b)(1).

10 CFR 150.20(b)(1) requires, in part, that when engaging in activities in NRC jurisdiction under the general license granted by 10 CFR 150.20(a), four copies of NRC Form 241 (revised) and four copies of the Agreement State specific license be filed with the Regional Administrator of the appropriate NRC Regional office at least three days prior to engaging in such activity.

Contrary to the above, on February 7-9, 1994, Johnson Yokogawa Corporation performed maintenance of a sulfur-in-oil analyzer containing 550 millicuries of americium-241 in a facility licensed under NRC jurisdiction located in Marcus Hook, Pennsylvania, and had not filed four copies of NRC Form 241 and its Agreement State license with the Regional Administrator of the appropriate NRC Regional office at least three days prior to engaging in such activity.

This is a Severity Level III problem (Supplement VI).
Civil Penalty - \$10,000

Pursuant to the provisions of 10 CFR 2.201, Johnson Yokogawa Corporation (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition

Enclosure 1

Notice of Violation and Proposed 2
Imposition of Civil Penalty

of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved.

If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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.

Notice of Violation and Proposed 3
Imposition of Civil Penalty

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

Dated at Atlanta, Georgia
this 13th day of December 1994

LISTING OF ENFORCEMENT CONFERENCE ATTENDEES

Nuclear Regulatory Commission

Luis A. Reyes. Deputy Regional Administrator. Region II
Carolyn F. Evans. Regional Counsel. RII
J. Philip Stonr. Director. Division of Radiation Safety and
Safeguards (DRSS)., RII
B. Uryc. Director. Enforcement and Investigation Coordination Staff
(EICS), RII
C. Hosey. Chief. Nuclear Materials Inspection Section (NMIS), DRSS, RII
Hector Bermúdez. Senior Radiation Specialist. NMIS. DRSS. RII
Linda J. Watson. Senior Enforcement Specialist. EICS.. RII

Johnson Yokogawa Corporation

T. Bisn. Radiation Safety Officer
B. Schmitz. General Manager for Operations
J. Jerman. Service Supervisor
F. Johnston. Technical Assistance Center Supervisor

Enclosure 2

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

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

February 13, 1995

EA 95-022

Brucker Earth Engineering & Testing
ATTN: Daniel B. Barnes, P.E.
President
8706 Manchester Road
St. Louis, Missouri 63144-2724

Dear Mr. Barnes:

SUBJECT: NRC INSPECTION REPORT NO. 030-33413/95001 AND NOTICE OF VIOLATION

This refers to the special safety inspection conducted from January 9 to January 18, 1995, to review the circumstances surrounding damage to a soil moisture/density gauge containing NRC licensed materials on March 19, 1994. While the NRC-licensed materials housed in the gauge (nominally 8 millicuries of cesium-137 and 40 millicuries of americium-241) were not damaged, a corner of the gauge cover was damaged by an earth scraper while the gauge was left unattended by the authorized user. The incident is fully described in the enclosed inspection report (Enclosure 1).

The NRC inspection determined that the cause of the incident was the authorized user's failure to maintain control of the gauge. The inspection found that corrective actions consisted of immediately entering into your emergency plan, including communications with the manufacturer of the gauge. Long term corrective action consisted of individual refresher training with each gauge user, including an emphasis that a gauge was not to be left unattended. All of the necessary information to make an enforcement determination (e.g. root cause analysis, corrective actions) was obtained during the safety inspection. Therefore, the NRC determined that an enforcement conference was not necessary.

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

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

A civil monetary penalty is considered for a Severity Level III violation.

Brucker Earth Engineering & Testing - 2 -

However, after considering the civil penalty adjustment factors, in particular identification, corrective action and the good radiation safety program administered by your Radiation Safety Officer, I have decided not to issue a civil penalty in this case.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your 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 responses will be placed in the NRC Public Document Room. To the extent possible, your response should not contain any personal privacy, proprietary, or safeguards information so that it can be placed in the NRC Public Document Room (PDR) without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Sincerely,

John B. Martin
Regional Administrator

Docket No. 030-33413
License No. 24-26550-01

Enclosures: 1. Inspection Report 030-33413/95001
2. Notice of Violation

NOTICE OF VIOLATION

Brucker Earth Engineering
and Testing
St. Louis, Missouri

Docket No. 030-33413
License No. 24-26550-01
EA 95-022

During an NRC inspection conducted from January 9 to January 18, 1995, a violation of NRC requirements was identified. In accordance with the "Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is set forth below:

Condition No. 15 of NRC Byproduct Material License No. 24-26550-01 requires, in part, that when performing tests at temporary jobs sites, the authorized user shall not leave the moisture/density gauge unattended.

Contrary to the above, on March 19, 1994, a licensee authorized user was performing tests at a temporary job site in the vicinity of St. Louis, Missouri, and left the moisture/density gauge unattended. Specifically, the authorized user walked approximately 20 feet from the gauge, engaged in conversation with a site employee, and during this time the gauge was damaged by earth moving equipment. (01013)

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

Pursuant to the provisions of 10 CFR 2.201, Brucker Earth Engineering and Testing (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a demand for information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Lisle, Illinois
the 13th day of February 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

March 28, 1995

EA 95-039

Calumet Testing Services, Inc.
ATTN: Bob Vidimos
President
1945 Griffith Boulevard
Griffith, IN 46319

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 030-10856/95001(DRSS))

Dear Mr. Vidimos:

This refers to the special safety inspection conducted on February 27, 1995, to review the circumstances surrounding an incident that occurred on February 25, 1995. During the inspection, a significant violation of NRC requirements was identified, and an enforcement conference was conducted in Region III on March 16, 1995. Attending the conference were you, Ms. B. J. Holt, and other members of our respective staffs.

The incident involved the theft of a truck which contained a locked radiography device containing about 80 curies of iridium-192. The radiographer had left the keys in the ignition when he went into a service station and when he came out, he observed the vehicle being driven away. Fortunately, the radiographer had the keys to the radiography device on his person.

The radiographer notified his management who then notified local law enforcement authorities, a local radio station, and the NRC. A Chicago TV station broadcast news of the theft on February 26 and as a direct result of that newscast, a member of the public called and said the truck was parked in the street near her home. Police then recovered it.

All indications are that no one tried to tamper with the device, and it is believed the person who stole the truck simply wanted transportation. It was found about 3 miles from where it was stolen; the gas tank was still full; and nothing was missing from it.

The violation, described in Section I of the enclosed Notice of Violation (Notice), concerns a significant failure of the radiographer to keep licensed material under constant surveillance and immediate control. The root cause of the violation appears to be poor judgement by the radiographer and is of concern because it allowed radioactive material to get into the public domain. Such loss of control is unacceptable and 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 other violation in the Notice is categorized at Severity Level IV.

We acknowledge your immediate and long term corrective actions. As noted, you notified the NRC and local radio stations of the event, and then were interviewed by a Chicago TV station which broadcast the story and led directly to the recovery of the truck and the gauge. Other actions included: a personal meeting by your radiation safety officer with each employee involved with radiography (about 24 people) informing them of the incident and instructing them not to leave keys in unattended vehicles containing a radiography device; requiring radiography staff to review and sign an information sheet regarding the incident and their understanding of the importance of equipment security; planning to meet with client management to discuss concerns regarding requirements for leaving ignition keys in unattended vehicles on client premises, and instructing your staff that in the meantime, such vehicles must be attended at all times; retesting radiography personnel to determine where review was necessary; and revising the periodic training program to improve efficiency and effectiveness.

In accordance with the Enforcement Policy, a civil penalty is usually assessed for a Severity Level III violation. However, after considering the civil penalty adjustment factors set forth in the NRC's Enforcement Policy, I have decided that a civil penalty will not be assessed in this case. Full mitigation was warranted for your initiative in determining the root cause of this self-disclosing event, for your good corrective actions as noted above, and because of your good past performance.

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

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. 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, PL 96-511.

Sincerely,

John B. Martin
Regional Administrator

Docket No. 030-10856
License No. 13-16347-01

Enclosure: Notice of Violation

NOTICE OF VIOLATION

Calumet Testing Services, Inc.
Griffith, Indiana

Docket No. 030-10856
License No. 13-16347-01
EA 95-039

During an NRC inspection conducted on February 27, 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. 10 CFR 34.23 requires that locked radiographic exposure devices and storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel.

Contrary to the above, on February 25, 1995, a licensee radiographer did not physically secure a locked radiographic exposure device to prevent tampering or removal by unauthorized personnel. Specifically, a licensee radiographer left the ignition key in a vehicle containing a radiographic exposure device, and the vehicle was stolen. (01013)

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

- II. Condition 19 of License No. 13-16347-01 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated October 27, 1992, and letters dated March 26, 1993, April 19, 1993, and May 19, 1993.

Item 8.5 of the application dated October 27, 1992, entitled, "Periodic Training," requires, in part, that a semiannual examination will be given to all radiographers, and that test results will be used to determine where review is necessary.

Contrary to the above, as of February 27, 1995, the September 1994 semiannual examinations given to all radiographers had not been graded so that test results could be used to determine where review was necessary. (02014)

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

Pursuant to the provisions of 10 CFR 2.201, Calumet Testing Services, Inc., is hereby required to submit a written statement or explanation to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order

Notice of Violation

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or a demand for information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Lisle, Illinois
this 28 day of March 1995

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

January 9, 1995

EA 94-246

Cumberland Village Mining Group
ATTN: Mr. Thomas L. Cummings, Jr., Chairman
200 12th Avenue South
Nashville, Tennessee 37203

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 999-90002/94-02)

Dear Mr. Cummings:

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Mr. Jerry D. Ennis of this office between March 18 and November 30, 1994. The inspection involved the review of the loss of a gauge containing byproduct material and included onsite inspections at a facility owned by Steel of West Virginia in Huntington, West Virginia and at your Matewan, West Virginia facility as well as telephone conversations with representatives of several companies with knowledge of the events surrounding this matter. The report documenting this inspection was sent to you by letter dated December 16, 1994. During the inspection, a violation of NRC requirements was identified.

The violation described in the enclosed Notice of Violation (Notice) involved a failure to comply with the requirements of 10 CFR 31.5 during transfer of a Kay-Ray/Sensall Model 7062BP gauge, serial number 16661, containing 100 millicuries of cesium-137. 10 CFR 31.5 requires that a device containing byproduct material be transferred or disposed of only by transfer to a person holding a specific license to receive the device. The failure of your staff to control the device during dismantling of your coal preparation plant resulted in the inadvertent shipment of the device in a load of scrap metal to a Steel of West Virginia smelter in Huntington, West Virginia. The loss of the device was discovered on March 16, 1994, when a truckload of scrap from the Kentucky and West Virginia Metal Company scrap yard in Williamson, West Virginia, activated a radiation alarm at a Steel of West Virginia facility in Huntington, West Virginia. Neither of these entities held a specific NRC license to possess byproduct material. Subsequent review indicated that the gauge was registered to Cumberland Village Mining, Matewan, West Virginia.

The gauge was shipped to Cumberland Village Mining in March 1984, under the general license granted by 10 CFR 31.5. The device had been evaluated by the State of Illinois, an Agreement State, and a Safety Evaluation entered in the Registry of Radioactive Sealed Sources and Devices under registration number IL-412-D-129-B. In addition to this gauge, Kay-Ray/Sensall records indicated that one other Model 7062BP gauge, serial number 19997, had been shipped to Cumberland Village Mining Group, Matewan, West Virginia. Records indicate that the second gauge was properly transferred to an authorized recipient. TN Technology records indicate that two other gauges were shipped to Cumberland Village Mining in 1984 and 1985, respectively, for use on Power Screen equipment. As of this date, these gauges have not been located and the records regarding the gauges are no longer available from the licensee or

manufacturer since records are not required to be maintained longer than three years.

The root cause of the violation was the failure of the Cumberland Village Mining staff to track the location of the gauges as operations and staff were reduced prior to the company being sold and the assumption of the Cumberland Village Mining staff that the gauges had been removed and properly disposed of in connection with the removal of other specialized equipment from the Matewan, West Virginia facility prior to December 1988. During the exit interview following the inspection, you stated that you continued to believe that the Cumberland Village Mining staff had probably assumed, without independently verifying, that the gauges had been properly disposed of, i.e., returned to the supplier, in connection with the removal of certain specialized equipment sometime prior to December 1988.

As stated in our letter of December 16, 1994, the NRC normally provides an opportunity for an enforcement conference with a licensee prior to making a decision regarding an escalated enforcement action. In a December 7, 1994 telephone call with Mr. J. Ennis of my staff, Mr. C. Harris, your attorney, declined participation in an enforcement conference. During a telephone conversation with Mr. Harris on December 27, 1994, he advised us that you had reviewed the inspection report and believed that we had all of the necessary information concerning the violation and that an enforcement conference would be of no benefit in this case. We have reviewed the information obtained during inspection of this issue and have concluded that sufficient information is available to determine the appropriate action in this matter.

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

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 normally considered for a Severity Level III violation. However, given the age of this matter a civil penalty is not being proposed in this case for the violation. The device was most likely transferred either in December 1988 when Cumberland Village Mining was sold to Rawl Sales and Massey Coal Sales or the device was removed from the facility with equipment that had been removed by the R. L. Cook Company before the company was sold. You also stated that Cumberland Village Mining was not currently an operating company, that there was no intention to resume operations, and that corrective actions to prevent recurrence were not needed. You indicated that you would notify the NRC if any additional information concerning the two missing gauges came to your attention. Since you are no longer operating or have a location where such devices would be used in the future, you do not need to respond to the enclosed Notice or advise NRC of any corrective actions.

Cumberland Village
Mining Group

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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.

Should you have any questions concerning this letter, please contact Mr. Charles Hosey at (404) 331-5614.

Sincerely,

Stewart D. Ebnetter
Regional Administrator

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

Enclosure: Notice of Violation

cc w/encl:
State of Tennessee
State of West Virginia

NOTICE OF VIOLATION

Cumberland Village Mining Group
Nashville, Tennessee

Docket No. 999-90002
License No. General License
(10 CFR 31.5)
EA 94-246

During an NRC inspection conducted between March 18 and November 30, 1994, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

10 CFR 31.5(a), in part, issues a general license to commercial and industrial firms to acquire, receive, possess, use or transfer, in accordance with the provisions of paragraph (c) of this section, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling level.

10 CFR 31.5(c) requires, in part, any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license in paragraph (a) of this section shall transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license to receive the device pursuant to parts 30 and 32 of this chapter or from an Agreement State.

Contrary to the above, the licensee transferred a device containing byproduct material to a person who did not possess a specific license to receive the device. Specifically, as a result of the sale of the licensee's Matewan, West Virginia coal preparation plant, a device containing 100 millicuries of cesium-137 was transferred from the licensee to Rawl Sales and Processing Company, a mining company, which did not hold a specific license to receive the device.

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

Dated at Atlanta, Georgia
This 9th day of January 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I

1111 AVENUE PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76010-5064

January 6, 1995

EA 94-264

IRT Corporation
ATTN: Kathleen Terry, CFO and
Vice President, Administration
Post Office Box 85317
San Diego, California 92186-5317

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 070-1359/94-02)

Dear Kathleen Terry:

This refers to the special announced inspection conducted by Mr. Dean Chaney of this office on October 20-22, 1994, at the IRT facility in San Diego, California concerning the shipment of 13 mixed oxide fuel rods, and telephonic conversations between NRC and Mr. Kay Crosbie, IRT Radiation Safety Officer, on November 7 and 22, 1994 concerning the plutonium-beryllium source shipment problems identified to IRT by the Department of Energy on November 4, 1994. On November 7, 1994, Mr. Crosbie reported to the NRC that Department of Energy personnel at Los Alamos National Laboratory in Los Alamos, New Mexico had informed the Licensee that the plutonium-beryllium source had been shipped via non-exclusive use vehicle in violation of Department of Transportation requirements and that the exposure rate at one meter was found to be approximately two times higher than shipping papers stated.

The violation in the enclosed Notice of Violation involves a failure to comply with 49 CFR 173.441(a) and (b), which state, in part, that each package of radioactive materials offered for transport with a transport index greater than 10 be transported by exclusive use shipment only. Specifically, you identified the shipping package containing a plutonium-beryllium source as having a transport index of 11 and shipped it to Los Alamos National Laboratory via "non-exclusive use" private carrier on October 27, 1994. This mistake was exacerbated by the fact that the transport index as measured at Los Alamos National Laboratory was 26. Due to these oversights the shipment did not receive the special handling and controls required of "exclusive use" cargo, thus increasing the potential for damage, overexposure or loss. IRT's letter of November 17, 1994, indicated that the cause of this violation was the failure of the Radiation Safety Officer to comply with Department of Transportation requirements, and failure of the Radiation Safety Officer to properly interpret the neutron survey instrument's readings.

The NRC has reviewed the IRT report, dated November 17, 1994, describing the investigation of the shipment. The report indicates that a maximally exposed individual could have received a dose of approximately 34 millirem due to inadvertent exposure to the plutonium-beryllium source package during transport and handling. The estimate is less than the total effective dose equivalent limit of 10 CFR 20.1301(a)(1) for an individual member of the

public. Although it appears that no dose limit was exceeded, the shipment of the source by non-exclusive use impacted on the carrier's ability to exercise adequate controls and presented a substantial potential for personnel exposure above the regulatory limit. Therefore, this violation has been categorized at Severity Level III.

In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, a civil penalty is normally considered for a Severity Level III violation. However, after considering the civil penalty adjustment factors set forth in Section VI.B.2 of the Enforcement Policy, I have decided that a civil penalty will not be assessed for the Severity Level III violation. Specifically, full mitigation was warranted based on your good past performance. In addition, you promptly brought the violation to the NRC's attention and all radioactive materials possessed under your license SNM-1405 have been disposed pending your request to terminate your license. These circumstances result in no adjustment to the base civil penalty for the factors of identification and corrective action. The other adjustment factors were considered and no further adjustment to the base civil penalty was considered appropriate.

Based on the November 17, 1994 information submitted and because of the cessation of NRC-licensed activities and the pending license termination, you are not required to respond to this letter and the enclosed Notice of Violation. 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,

L. J. Callan
Regional Administrator

Docket No. 070-1359
License No. SNM-1405

Enclosures:

1. Notice of Violation
2. Inspection Report
070-1359/94-02 w/Attachments

cc w/enclosures:

Department of Energy
Los Alamos National Laboratory
ATTN: S. Jones, MS E524
P.O. Box 1663
Los Alamos, NM 87545

cc w/enclosures: See Next Page

NOTICE OF VIOLATION

IRT Corporation
San Diego, California

Docket No. 070-13596
License No. SNM-1405
EA 94-264

Based on the NRC on-site inspection conducted October 20-22, 1994, telephone conversations on November 7 and November 22, 1994, and the NRC's review of IRT's letter to the NRC dated November 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 violation is listed below:

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

49 CFR Parts 173.441(a) and (b) require, in part,

- (a) that each package of radioactive materials offered for transportation shall be designed and prepared for shipment so that the transport index does not exceed ten.
- (b) a package which exceeds the radiation level limits specified in paragraph (a) above shall be transported by exclusive use shipment only.

Contrary to the above, on October 27, 1994, the licensee delivered to a common carrier for transport a package containing an encapsulated plutonium-beryllium source and the transport index for the package exceeded ten. Specifically, the package had a transport index of 11 and was not transported by exclusive use shipment.

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

Dated at Arlington, Texas
this 6th day of January 1995

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV

611 R / AN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

January 10, 1995

IA 95-001

Mr. Gregory D. Fox, President
Nuclear Scanning Services, Inc.
2437 Bay Area Blvd., Suite 297
Houston, Texas 77058

SUBJECT: NOTICE OF VIOLATION (INVESTIGATION REPORT NO. 4-93-040R)

Dear Gregory D. Fox:

This refers to the investigation of Nuclear Scanning Services, Inc. (NSS) conducted by the NRC's Office of Investigations (OI) and completed in September 1994. The investigation focused on NSS' use of NRC-licensed radioactive material in states under NRC jurisdiction. Based on the results of the investigation, an enforcement conference with NSS was conducted on November 22, 1994, in the NRC's Arlington, Texas offices to discuss your apparent deliberate failure to file NRC Form 241 for reciprocity while working in Ohio and Michigan.

At the transcribed enforcement conference, you admitted that you deliberately failed to submit the NRC Form 241 to NRC when NSS performed nuclear gauging activities in NRC jurisdiction. Further, you stated that you did not appreciate the significance that the NRC attaches to this notification requirement, particularly since you had never been inspected, and that you immediately notified the NRC and paid the required fees after you were interviewed by the NRC's investigator. Furthermore, you indicated that you were motivated by your concern that you would lose business to your competitors should your competitors request information on any Form 241s NSS had filed with the NRC.

Based on the evidence gathered during the OI investigation and at the enforcement conference, the NRC has determined that you engaged in deliberate misconduct when you, as the Radiation Safety Officer and President of NSS, deliberately failed to submit a NRC Form 241 to NRC when NSS conducted nuclear gauging activities in NRC jurisdiction. After consultation with the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, I am issuing the enclosed Notice of Violation to you. The Notice describes your deliberate misconduct pursuant to 10 CFR 30.10. In addition, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,800 is being issued this date to NSS.

The NRC gave serious consideration to issuing an order suspending NSS' authority to conduct NRC-licensed activities in areas under NRC jurisdiction and, as discussed in Section VIII of the Enforcement Policy to prohibiting your individual involvement in NRC-licensed activities for one or more years. However, NRC has not done so after taking into consideration the specific circumstances in this case. Instead, the NRC has decided to issue a Notice of

Violation to you based on (1) the corrective actions you stated at the enforcement conference which included filing of NRC Form 241 as required and review of the NRC requirements, (2) your training and experience as well as your lack of knowledge of the potential consequences of the wrongdoing, and (3) your candor in admission of the wrongdoing and acceptance of responsibility expressed by you during the transcribed enforcement conference.

The Commission's regulations at 10 CFR 30.10 provide, in part, that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes 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, and that any person who violates these requirements may be subject to enforcement action including prohibition from NRC-licensed activities. You should be aware that your actions did not meet the NRC's expectations and caused NSS to be in violation of NRC requirements. Similar deliberate misconduct by you in the future may result in more significant enforcement action against you such as issuance of an order prohibiting your involvement in NRC-licensed activities, as provided in 10 CFR 2.202 and 10 CFR 30.10. A violation of 10 CFR 30.10 may also lead to criminal prosecution. The NRC expects full compliance with all applicable NRC requirements and deliberate violation of such requirements will not be tolerated.

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 the Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). A copy of this letter and the enclosed Notice of Violation with your address removed will be placed in the PDR unless you provide a sufficient basis to withdraw this violation within the 30 days specified for a response in the enclosed Notice of Violation. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Gregory D. Fox

- 3 -

Questions concerning this letter and Notice of Violation should be addressed to Ms. Patricia A. Santiago, Assistant Director for Materials, Office of Enforcement, who may be reached at (301) 504-3055.

Sincerely,

L. J. Callan
Regional Administrator

Enclosures:

1. Notice of Violation (IA 95-001)

NOTICE OF VIOLATION

Gregory D. Fox

IA 95-001

During an NRC investigation completed in September 1994, a deliberate 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 30.10 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. Deliberate misconduct means, in part, an intentional act or omission that the person knows: 1) would cause a licensee to be in violation of any regulation; or 2) constitutes a violation of a procedure of a licensee.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States under the general license provided in 10 CFR 150.20(a) must at least three days before engaging in each activity, file four copies of Form-241, "Report of Proposed Activities in Non-Agreement States," and four copies of its Agreement State specific license with the Regional Administrator of the U.S. NRC Regional Office for the Region in which the Agreement State that issued the license is located.

Contrary to the above, on July 29 and August 20, 1993, and on August 21 and December 13, 1993, and February 15, 1994, Gregory D. Fox, President and Radiation Safety Officer for Nuclear Scanning Services, Inc., failed to file an NRC Form 241 prior to engaging in NRC-licensed activities in Ohio and Michigan, both of which are non-Agreement States.

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

Pursuant to the provisions of 10 CFR 2.201, Gregory D. Fox is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued to show cause why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Arlington, Texas
this 10th day of January 1995

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

February 7, 1995

EA 94-270

OSi Specialties, Inc.
ATTN: L. W. Phair
Plant Manager
P. O. Box 180
Sistersville, WV 26175

SUBJECT: NOTICE OF VIOLATION
NRC INSPECTION REPORT NO. 47-06067-03/94-01

Dear Mr. Phair:

This refers to the inspection conducted by Ms. A. Jones of this office on December 12-13, 1994, and subsequent telephone conversations and records reviews through December 28, 1994. The inspection included a review of the facts and circumstances surrounding the modification of gauges containing sealed radioactive sources which were installed at your Sistersville, West Virginia facility. 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 January 12, 1995. An enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on January 24, 1995 to discuss the violations, their cause, and your corrective actions to preclude recurrence. A list of enforcement conference attendees is enclosed.

Violation A, described in the enclosed Notice of Violation (Notice), involved modification of components directly associated with devices containing sealed radioactive sources by an individual who was not licensed to do so. Specifically, on October 27, 1994, an instrument mechanic removed the shutters from two Texas Nuclear 5192 non-portable nuclear level gauges during modifications to reduce the radiation level at the gauge detectors. The gauges, identified by serial numbers 533 and B1242, contained sealed radioactive sources, containing 200 millicuries and 50 millicuries of cesium-137, respectively. The shutters on both gauges, which provided the shielding for the two sources, were removed for approximately one hour. Removal of the shutters resulted in a significant increase in the radiation levels in accessible areas about the devices.

Violation A occurred as a result of inadequate communication, poor work control procedures, inadequate staff training on license restrictions, and inadequate supervision of the work process. The NRC entrusted the responsibility for control of licensed material to the management of OSi and your Radiation Safety Officer. The NRC is particularly concerned that your management oversight of the modification was inadequate. You also failed to ensure a thorough understanding and effective implementation of conditions incorporated in the license. These conditions provided that work on the gauges be performed by individuals qualified in the radiation protection

measures needed to ensure protection of the public and your employees. Although the actual safety significance of this event was minor because workers were not directly exposed to the radiation beam that resulted from removal of the shutters, the potential existed for unnecessary exposure to your employees. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, Violation A has been categorized at Severity Level III.

The NRC understands that your corrective actions included: (1) conducting an incident investigation; (2) completing revisions to plant procedures to upgrade the level of control of the gauges; (3) retraining on procedure changes and gauge control; (4) counseling involved employees on requirements; and (5) review of the incident with senior managers and plant staff.

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.8.2 of the Enforcement Policy were considered. Full mitigation of the civil penalty was warranted because your management identified the violation and conducted a thorough investigation of the event, and your corrective actions were prompt and extensive. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was considered appropriate.

Violations B and C, described in the enclosed Notice, resulted directly from the failure to control the modification activities on the gauges. The violations are being cited as a result of your failure to conduct operations so that the dose in any unrestricted area from external sources did not exceed 2 millirem in any one hour and your failure to post the radiation area. These violations have been categorized as Severity Level IV violations.

During the enforcement conference, you noted minor corrections to the inspection report. Corrected pages for the inspection report are enclosed.

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. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

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

Sincerely,

Stewart D. Ebnetter
Regional Administrator

Docket No. 030-14716
License No. 47-06067-03
EA 94-270

Enclosure: 1. Notice of Violation
2. Listing of Enforcement
Conference Attendees
3. Corrected Pages for NRC Inspection
Report 47-06067-03/94-01

cc w/encl:
State of West Virginia

NOTICE OF VIOLATION

OSi Specialties, Inc.
Sistersville, West Virginia

Docket No.: 030-14716
License No.: 47-06067-03
EA 94-270

During an NRC inspection conducted on December 12-13, 1994, and subsequent telephone conversations and records reviews through December 28, 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. License Condition 14, to NRC license No. 47-06067-03, Amendment No. 11, states in part that the licensee may maintain, repair, or replace device components not directly associated with the device's sealed source, its related shielding, or the device's on-off mechanisms; and that will not result in increased radiation levels in accessible areas about the device.

Contrary to the above, on October 27, 1994, an instrument mechanic employed by the licensee removed the shutters, a component directly related to the shielding, from two Texas Nuclear 5192, non-portable nuclear level gauges, serial numbers 533 and B1242, containing a total of 250 millicuries of cesium-137. This activity resulted in increased radiation levels in accessible areas about the device. (01013)

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

- B. 10 CFR 20.1301(a)(2) requires that the licensee conduct operations so that the dose in any unrestricted area from external sources does not exceed 2 millirem in any one hour.

Contrary to the above, on October 27, 1994, licensee operations resulted in a dose in an unrestricted area that exceeded 2 millirem in one hour. Specifically, due to the removal of shutters on non-portable gauges 533 and B1242, the dose in the unrestricted area adjacent to the gauges would have been approximately 72 millirem in one hour. (02014)

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

- C. 10 CFR 20.1902(a) requires that the licensee post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

Contrary to the above, on October 27, 1994 during the time in which the shutters were removed from non-portable gauges 533 and B1242, a radiation area with a radiation dose rate of approximately 72 millirem/hr, was not posted with a sign bearing the radiation symbol and the words "CAUTION, RADIATION AREA." (03014)

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

Enclosure 1

Notice of Violation

- 2 -

Pursuant to the provisions of 10 CFR 2.201, OSi Specialties, Inc. is hereby required to submit a written statement or explanation to the Regional Administrator, Region II, with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or demand for information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Atlanta, Georgia

This 7th day of February 1995

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

February 23, 1995

EA 95-013

Mr. Michael Crouch, Director
Office of Research and Development
University of Pittsburgh
350 Thackery Hall
Pittsburgh, Pennsylvania 15261

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report Nos. 030-02945/95-001, 030-29418/95-001, and
030-07057/95-001)

Dear Mr. Crouch:

This refers to the NRC inspection conducted from January 9 through 13, 1995, at your facilities in Pittsburgh, Pennsylvania. The inspection report was sent to you on February 3, 1995. During the inspection, two apparent violations of NRC requirements were identified. On February 13, 1995, an enforcement conference was conducted with you, Alexander Ciocca, J.D., Niel Wald, M.D., and Jerry Rosen, to discuss the apparent violations, their causes and your corrective actions. A copy of the enforcement conference report is enclosed.

The two violations cited are described in the enclosed Notice of Violation (Notice). The most significant violation, in Item A of the enclosed Notice, involves the failure to maintain operable, as required, an interlock to the old teletherapy room in the Montefiore Hospital. Specifically, during the inspection, the inspector and two members of your Radiation Safety Officer's (RSO) staff noted that the door interlock microswitch, for your Theratron 78 irradiator, was taped, effectively bypassing this safety feature. At that time, the Theratron 78 unit contained approximately 4000 curies of cobalt-60.

During the inspection, the authorized user indicated, that the unit was last used to irradiate a baboon on January 5, 1995. When the source failed to leave its shielded position for the second irradiation, he attempted to diagnose the problem by placing tape over the microswitch. The authorized user stated that he forgot to remove the tape after he determined that the cause of the problem did not involve the microswitch. After identifying the cause as a lack of pressure in the hydraulic system which drives the source out of its shielded position, he subsequently performed the next irradiation with the tape on the microswitch.

The NRC recognizes that the significance of the violation was minimized by the fact that the room which housed the unit was secured with a key lock, and a motion detector was present which would return the source to the shielded position if someone were to enter the room while the source was exposed. The NRC also recognizes that the authorized user indicated to the inspector that prior to the next irradiation, he would have performed the required daily operational check of the unit, would have identified that the microswitch was still taped, and would have removed the tape at that time. The NRC further recognizes that you maintained at the enforcement conference that the user believed that

troubleshooting the unit by bypassing the interlock was a decision he could make using professional judgement, and that he did not realize the need to inform the Radiation Safety Officer (RSO) or radiation safety staff. Nonetheless, the failure to inform the RSO promptly of the condition constitutes a significant regulatory concern.

The NRC license issued to the University of Pittsburgh entrusts you and your staff with the responsibility for maintaining appropriate control of licensed activities so as to prevent unnecessary exposure of individuals to radiation. Although there were no unnecessary exposures in this case, the failure to maintain proper operation of a significant safety feature such as an interlock could create such an event. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, this violation is classified at Severity Level III.

The NRC recognizes that subsequent to the inspection, corrective actions were taken or planned (prior to resumption of irradiator use), to correct the violation and prevent recurrence. These actions, which were described during the enforcement conference, included: (1) shutting down the unit until completion of necessary maintenance on the hydraulic system and NRC approval of an amendment request for an exemption to 10 CFR 36.23(d); and (2) counseling and issuing a letter of reprimand to the user. In addition, during the conference you stated your intent to post additional information/instructions in the area of the unit console that instructs the user to contact the RSO's office in a similar event, provide additional training to the staff, and provide weekly audits of the irradiator operators.

In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, a civil penalty is considered for a Severity Level III violation. However, I have been authorized not to propose a civil penalty in this case. In applying the escalation/mitigation factors, the penalty was (1) escalated by 50% because the violation was identified by the NRC; (2) mitigated by 50% in view of your prompt and comprehensive corrective actions once the violation was identified; and (3) mitigated an additional 100% in view of your overall good enforcement history during the past two NRC inspections of your licensed activities in 1993 and 1992, as well as the last two NRC inspections of your irradiator program in 1991 and 1990 during which no violations were identified. The other factors in the policy were considered and no further adjustment to the base civil penalty was considered appropriate. Therefore, on balance, the penalty has been mitigated in its entirety. The second violation, Item B of the enclosed Notice, is characterized as a Severity Level IV.

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

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

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

Sincerely,

Thomas T. Martin
Regional Administrator

Docket Nos. 030-02945
030-29418
030-07057

License Nos. 37-00245-02
37-00245-09
37-00134-06

Enclosures:

1. Notice of Violation
2. Enforcement Conference Report

ENCLOSURE 1

NOTICE OF VIOLATION

University of Pittsburgh
Pittsburgh, Pennsylvania

Docket No. 030-07057
License No. 37-00134-06
EA 95-013

During an NRC inspection conducted from January 9 through 13, 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 set forth below:

- A. 10 CFR 36.23(a) requires, in part, that each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier such that it must not be possible to move the sources out of their shielded position if the door or physical barrier is open.

Contrary to the above, on January 5, 1995, when an irradiation was performed, it was possible to move the source out of its shielded position when the door to the panoramic irradiator was opened in that the irradiator operator on that date previously bypassed the required door interlock by placing tape over the microswitch in order to determine why the irradiator would not restart. (IFS Code 01013)

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

- B. 10 CFR 36.23(d) requires that, before the source moves from its shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the source will be moved from its shielded position.

Contrary to the above, prior to January 13, 1995, the licensee's source control did not automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the source was about to be moved from its shielded position. Specifically, the licensee never installed such a system.

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

Pursuant to the provisions of 10 CFR 2.201, University of Pittsburgh (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an Order

Enclosure 1

2

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

Dated at King of Prussia, Pennsylvania
this 23rd day of February 1995

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

March 1, 1995

EA 95-017

U. S. Army Test, Measurement,
and Diagnostic Equipment Activity
ATTN: Robert K. DuBois, Director
TMDE Activity
Redstone Arsenal, Alabama 35898-5400

SUBJECT: NOTICE OF VIOLATION AND ENFORCEMENT CONFERENCE SUMMARY
(NRC INSPECTION REPORT NO. SNM-1998/94-01)

Dear Mr. DuBois:

This refers to the inspection conducted by Mr. J. A. Mumper of this office on December 5, 1994 at the U.S. Army Test, Measurement, and Diagnostic Equipment Activity (TMDE) facilities in Redstone Arsenal, Alabama and the inspection by Mr. E. Garcia of the NRC's Walnut Creek Field Office at the U.S. Army TMDE facilities in Sacramento, California on December 20, 1994 and an in-office review conducted on January 19, 1995. The inspections were conducted in response to a reported shipment of a plutonium-239/ beryllium neutron source between the Sacramento Army Depot, Sacramento, California and the Los Alamos National Laboratory, Albuquerque, New Mexico. The report documenting this inspection was sent to you by letter dated February 8, 1995. A closed enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia on February 24, 1995 to discuss the violations, their cause, and your corrective actions to preclude recurrence. A list of enforcement conference attendees and a copy of your presentation summary are enclosed.

Violation A, described in the enclosed Notice of Violation (Notice), involved the failure to meet the requirements of 10 CFR 71.88 during shipment of a five curie NUMEC Type K plutonium-beryllium sealed source, serial no. N800-H49. Specifically, on November 4, 1994, the shipping documents for the source did not restrict the shipment specifications to preclude air transport. The source, which was not packaged for air shipment or of a material form exempted from the requirements of 10 CFR 71.88, was subsequently transported by air. The violation was identified by personnel who received the source at the Los Alamos National Laboratory. Violation B described in the enclosed Notice involved the failure to include the physical and chemical description of the source, and the proper radioactive label on the shipping papers for the source. The root causes of the violations were inadequate coordination during the shipment process, ineffective communication of the requirements for shipping the plutonium source to the responsible individual by the Radiation Safety Officer, and lack of supervisory oversight for the preparation of the shipping documents by individuals knowledgeable of the transportation regulations.

The NRC is concerned that both your management and Radiation Safety Officer did not provide effective oversight of this shipment and failed to implement adequate controls to ensure regulatory requirements were met. These violations highlight the need to ensure that a knowledgeable Radiation Safety Officer or other qualified individual knowledgeable of the requirements is involved throughout the shipment of radioactive material and that adequate supervision is provided for shipments at all locations authorized on your license. Additional attention to detail should also be exercised when nonroutine tasks are performed. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C, Violations A and B have been classified collectively as a Severity Level III problem.

The NRC understands that your corrective actions included: (1) revision of the radioactive material movement form to provide information on chemical form, type of placard required and mode of transportation; (2) revisions to your shipping checklist to include special items for preparation of shipping papers; (3) training for health physics personnel on shipping requirements; and, (4) a request that Los Alamos National Laboratory add a paragraph to their Plutonium-Beryllium Neutron Source Recovery Program instructions stating that plutonium-beryllium neutron sources will not be shipped by air. You also stated during the enforcement conference that you had purchased a Type B container for the shipment of plutonium sources and were planning to provide notification to other Army facilities of the event and your corrective actions.

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 problem. However, I have been authorized not to propose a civil penalty in this case because, in accordance with Section VI.B.2 of the Enforcement Policy, the civil penalty was fully mitigated as described in the following paragraph.

The civil penalty adjustment factors in the Enforcement Policy were considered. Mitigation for the factor of identification was not warranted because the violation was identified by personnel at the Los Alamos National Laboratory. The civil penalty was mitigated because your corrective actions were timely and comprehensive and your past performance has been good. The other adjustment factors in the Enforcement Policy were considered, and no further adjustment to the base civil penalty was considered appropriate. Therefore, based on the above, the base civil penalty has been fully mitigated.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. 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 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.

During the enforcement conference, you clarified a statement in paragraph 4 of NRC Inspection Report No. SNM-1998/94-01, concerning the plutonium-beryllium source currently stored at U.S. Army TMDE in Lexington, Kentucky. Specifically, you advised that, contrary to the Inspection Report, this source may not be transferred to Redstone Arsenal, Alabama, prior to disposal at Los Alamos National Laboratory. However, you confirmed that, upon transfer of the material, your management would ensure that shipping paperwork and packaging met 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.

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. 070-03082
License No. SNM-1998

- Enclosures:
1. Notice of Violation
 2. List of Enforcement Conference Attendees
 3. Licensee Presentation Notes

cc w/encls: State of Alabama

NOTICE OF VIOLATION

U. S. Army Test, Measurement,
and Diagnostic Equipment Activity
Redstone, Alabama

Docket No. 070-03082
License No. SNM-1998
EA 95-017

During NRC inspections conducted on December 5, 1994, December 20, 1994 and January 19, 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:

- A. 10 CFR 71.88 provides, in part, that the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless: 1) the plutonium is contained in a medical device for individual human application; 2) the plutonium is contained in a material in which the specific activity is not greater than 0.002 microcuries per gram of material and in which the radioactivity is essentially uniformly distributed; 3) the plutonium is shipped in a single package containing no more than an A₂ quantity of plutonium in any isotope or form and is shipped in accordance with Section 71.5 of this part; or, 4) the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the Commission.

Contrary to the above, on November 4, 1994, the licensee delivered to a carrier and shipped a five curie NUMEC Type K plutonium-beryllium source, serial no. N800-H49, by air and the shipment did not meet any of exceptions specified above. (01013)

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

49 CFR 172.203(d) requires, in part, that the description for a shipment of radioactive material include: (1) the name of each radionuclide; (2) the physical and chemical form of the material; (3) the activity contained in each package of the shipment in terms of curies, millicuries, or microcuries; (4) the category of label applied to each package (e.g., RADIOACTIVE WHITE-I); and (5) the transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II OR -III labels.

Contrary to the above, on November 4, 1994, the licensee delivered to a carrier for transport a NUMEC Type K plutonium-beryllium source, serial no. N800-H49, and the description on the shipping paper that accompanied

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the shipment did not include the correct physical and chemical form of the material or the correct category of label applied to the package. (01023)

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

Pursuant to the provisions of 10 CFR 2.201, the U. S. Army Test, Measurement, and Diagnostic Equipment Activity 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 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 1st day of March 1995

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(See instructions on the reverse)

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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 Material Licensees (non-Medical) with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC, so that actions can be taken to improve safety by avoiding future violations similar to those described in this publication.

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