

for a hearing having been received, concludes that Dr. Pfluger is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on March 20, 1996, the State of Illinois, Department of Professional Regulation issued an Order indefinitely suspending Dr. Pfluger's license to practice dentistry, based upon his outstanding individual state income tax liability of over \$26,000.00 and his failure to file state individual income tax returns for the years 1989 through 1993. The Acting Deputy Administrator finds that in light of the fact that Dr. Pfluger is not currently licensed to practice dentistry in the State of Illinois, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Pfluger is not currently authorized to handle controlled substances in the State of Illinois. Therefore, Dr. Pfluger is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP4333477, previously issued to Robert A. Pfluger, D.D.S., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective February 12, 1998.

Dated: January 5, 1998.

**Peter F. Gruden,**

*Acting Deputy Administrator.*

[FR Doc. 98-705 Filed 1-12-98; 8:45 am]

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## DEPARTMENT OF LABOR

### Sunshine Act Meeting; Labor Advisory Committee for Trade Negotiations and Trade Policy

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

*Date, time and place:* January 21, 1998, 10:00 am, U.S. Department of Labor, C-5310, Seminar Rm. 1-B, 200 Constitution Ave., NW, Washington, D.C. 20210.

*Purpose:* The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

*For further information, contact:* Jorge Perez-Lopez, Director, Office of International Economic Affairs. Phone: (202) 219-7597.

Signed at Washington, D.C. this 7th day of January 1998.

**Andrew J. Samet,**

*Acting Deputy Under Secretary International Affairs.*

[FR Doc. 98-956 Filed 1-9-98; 2:55 pm]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-01; Exemption Application No. D-10452, et al.]

### Grant of Individual Exemptions; The Sperry Rail, Inc.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the

Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### The Sperry Rail, Inc. Retirement Plan (the Plan) Located in Danbury, Connecticut

[Prohibited Transaction Exemption 98-01; Exemption Application No. D-10452]

### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) by the Plan of \$965,000 to Sperry Rail, Inc., the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Loan does not

exceed 25% of the assets of the Plan; (b) the Loan is at terms not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan is secured by personal property that has been appraised by an independent appraiser as having a fair market value not less than 200% of the principal amount of the Loan; (d) an independent fiduciary has reviewed the proposed Loan on behalf of the Plan and has determined that the Loan is in the best interest of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary will monitor the Loan throughout its duration to ensure that it remains in the best interest of the Plan and continues to meet the conditions of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51692.

#### **Notice to Interested Persons**

The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by November 15, 1997. Interested persons were informed that they had until December 15, 1997 to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **First Bank System Personal Retirement Account (the Plan) Located in Minneapolis, Minnesota**

[Prohibited Transaction Exemption 98-02; Exemption Application No. D-10471]

#### **Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the contribution to the Plan by U.S. Bancorp (the Employer), formerly First Bank System, Inc., the sponsor of the Plan, of the Employer's interests in two limited partnership funds (the Interests) organized and managed by Kohlberg Kravis Roberts & Co. (KKR); and (2) the grant by the Employer to the Plan of an

option (the Put) under which the Plan is empowered at any time to require the Employer to repurchase the Interests from the Plan at any time; provided that the following conditions are satisfied:

(a) The Interests are valued at their fair market value as of the date of contribution by a qualified, independent appraiser;

(b) The sum of the fair market value of the Interests plus the fair market value of any other KKR-related investments held by the Plan does not exceed ten percent of the fair market value of the Plan's total assets at the time of the contribution of the Interests to the Plan;

(c) The Plan is represented for all purposes with respect to the Interests by a qualified independent fiduciary (the Fiduciary), as described in the Notice of Proposed Exemption, for the duration of the Plan's holding of any of the Interests;

(d) The Fiduciary takes whatever action is necessary, as determined by the Fiduciary in its sole discretion, to enforce the conditions of this exemption and to protect the Plan's investment in the Interests, including, but not limited to the exercise of the Put;

(e) The Fiduciary retains the right under the Put to require the Employer, at any time, to purchase some or all of the Interests from the Plan for the greater of (1) the Interests' fair market value as of the contribution date, or (2) the fair market value of the Interests as of the date of such sale pursuant to the Put; and

(f) For the duration of the Plan's investment in the Interests, the Employer's obligations under the Put are secured by the Collateral (as described in the Notice of Proposed Exemption) in escrow representing no less than one third of the fair market value of the Interests at the time of their contribution to the Plan, and the Fiduciary requires additional Collateral to be deposited in the escrow whenever the value of the Interests increases.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 4, 1997 at 62 FR 59740.

*For Further Information Contact:* Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **Robert A. Doneff Custodial IRA (the IRA) Located in Manitowoc, WI**

[Prohibited Transaction Exemption 98-03; Exemption Application No. D-10480]

#### **Exemption**

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain parcel of real property (the Property) by the IRA<sup>1</sup> to Robert A. Doneff (Mr. Doneff), a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) The IRA receives the fair market value of the Property, as established at the time of the Sale by a qualified, independent appraiser; and

(d) The IRA is not required to pay any commissions, costs, or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 20, 1997 at 62 FR 54479.

*For Further Information Contact:* Mr. James Scott Frazier of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

<sup>1</sup> Because Mr. Doneff is the only participant in the IRA, there is no jurisdiction under 29 CFR § 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of January, 1998.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 98-670 Filed 1-12-98; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[IA 97-074]

### Mr. Darrel T. Rich; Order Prohibiting Involvement in NRC-Licensed Activities

#### I

Mr. Darrel T. Rich (Mr. Rich) was formerly employed by Consumers Power Company (CPCo or Licensee) at the Big Rock Point Nuclear Plant (BRPNP) as a radiation protection technician. CPCo is the holder of License No. DPR-6 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. This license authorized CPCo to operate BRPNP in accordance with the conditions specified therein.

#### II

On October 18, 1996, the BRPNP assistant plant manager received allegations that routine radiological surveys required by plant procedures were not being performed by radiation protection technicians. An investigation was conducted by the Licensee in which radiation survey records were compared with security access records (i.e., key card entries). The licensee concluded that in several instances the person recording radiation survey data, Mr. Darrel T. Rich, had either not entered the areas where the surveys were required to be conducted or had not entered for a period of time long enough to conduct the survey. The survey

records, when compared to the security access records, show that Mr. Rich documented that the following radiation surveys were made and that he could not have performed these surveys: on July 21, 1996, a required daily air sample on the 585' level of the BRPNPP; and the monthly survey for the Radwaste Building dated September 15, 1996. The Commission's regulations, specifically 10 CFR 20.1501(a), "Surveys and Monitoring," requires a licensee to perform surveys to determine the radiological conditions at an NRC-licensed facility. 10 CFR 20.2103(a), "Records of Surveys," further requires that a licensee maintain records showing the results of the surveys. Furthermore, BRPNPP Technical Specification, Section 10, "Administrative Controls," Paragraph 6.11, "Radiation Protection Program," requires that procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20, and shall be approved, maintained and adhered to all operations involving personnel radiation exposure. BRPNPP Procedure No. RP-29, "Radiological Surveys," is the plant procedure that implements Technical Specification Section 10, Paragraph 6.11. Paragraphs 5.2.2 through 5.4.4 of Procedure RP-29 specify the locations where radiological surveys are to be conducted and requires that the results of each survey be recorded. 10 CFR 50.9(b),

"Completeness and Accuracy of Information," requires that information required by NRC regulations be maintained by an NRC licensee and the information shall be complete and accurate in all material respects.

The Licensee, on the basis of its investigation, concluded that Mr. Rich had falsified records of various radiological surveys. Mr. Rich resigned from BRPNP, effective November 7, 1996. As of November 8, 1996, Mr. Rich's unescorted access was unfavorably terminated for falsification of company records. The NRC Staff reviewed the investigative information furnished by the Licensee and concluded that Mr. Rich deliberately falsified radiological survey data at BRPNP.

Prior to the 1996 events, the NRC Office of Investigations (OI) conducted an investigation (OI No. 3-91-018) into allegations that during October 1991, Mr. Rich did not take smear samples for radioactive contamination, but recorded the results as though he had taken the samples. The Licensee took disciplinary action against Mr. Rich at that time. The NRC did not take enforcement action against Mr. Rich because he admitted

the violation and in consideration of the employment action taken by the Licensee involving Mr. Rich (EA 92-235).

#### III

Based on the above, it appears that Darrel T. Rich, a former employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 20.1501 and 10 CFR 50.9(a). It further appears that Mr. Rich deliberately provided to the Licensee information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 50.5(a)(2), "Deliberate Misconduct." The information is material to the NRC because 10 CFR 20.1501 and 20.2103 and 10 CFR 50.9 require these radiation surveys to be performed and that accurate records of them be maintained. 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. Rich's action in causing the Licensee to violate 10 CFR 20.1501, 20.2103 and 10 CFR 50.9(a) 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, 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. Rich were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Rich be prohibited from any involvement in NRC-licensed activities for a period of three years from the effective date of this Order, and if he is currently involved with another licensee in NRC-licensed activities at that time, 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. Additionally, Mr. Rich is required to notify the NRC of his first employment in NRC-licensed activities in the three years following the prohibition period.

#### 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, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered that:*