

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 34.46, *it is hereby ordered*, effective immediately, that:

1. Mr. Don Nottingham 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. If Mr. Nottingham is currently performing licensed activities for another licensee in an area of NRC jurisdiction, 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.

3. For a period of five years after the one year prohibition has expired, Mr. Don Nottingham shall within 20 days of his acceptance of subsequent employment offers involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice of his employment to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, including 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. Don Nottingham shall include a statement of his commitment to compliance with regulatory requirements and a statement regarding why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, U.S. Nuclear Regulatory Commission may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Don Nottingham of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nottingham must, and any 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 its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission

Washington, D.C. 20555, and include a statement of good cause for the extension. 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. Nottingham or other persons 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, Rulemakings and Adjudications Staff, 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 Deputy Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303-3415 and to Mr. Nottingham if the answer or hearing request is by a person other than Mr. Nottingham. If a person other than Mr. Nottingham 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. Nottingham 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. Nottingham, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediately effectiveness of the Order on the ground that the Order, including the need for immediately effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request 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. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall

not stay the immediate effectiveness of this order.

Dated this 17th day of October 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

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NUCLEAR REGULATORY COMMISSION

[IA-00-007]

In the Matter of Johnny Lee Rochelle; Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)

I

Mr. Johnny Lee Rochelle was employed at NDT Services, Inc. (NDTS) as a senior radiographer from 1994 through 1998. At the time, NDTS (Licensee) was the holder of Materials License No. 52-19438-01 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR part 30. The License authorized possession and use of up to 100 curies of iridium-192 and 20 curies of cobalt-60 in sealed radiography sources. The License was originally issued on August 21, 1980, and was due to expire on January 31, 2002. However, the License was suspended pursuant to an Order Suspending License (Effective Immediately) that was issued on March 27, 1998, pending the results of an NRC Office of Investigations (OI) investigation (see Section II). A subsequent Order Modifying License (Effective Immediately) issued on January 15, 1999, required NDTS to dispose of licensed material in its possession. The License was terminated on October 16, 2000.

II

An investigation by the NRC Office of Investigations (OI) was initiated on August 26, 1997, to determine whether NDTS, Inc., retaliated against several radiographers for raising concerns regarding safety and training issues. The investigation also addressed numerous other issues including: Personnel training; dosimetry usage; conduct of surveys; completion of survey records; the alleged performance of radiography by assistant radiographers without direct observation; an alleged 1995 incident involving the inability to retract a radiography source assembly to its fully shielded position (a "source disconnect event"); and the alleged failure to report the 1995 incident. The investigation did not substantiate that

discrimination occurred, but identified numerous examples of the willful failure to comply with NRC regulations, including the conduct of radiographic operations by assistant radiographers without direct observation of a qualified radiographer.

10 CFR 34.46, provides that whenever a radiographer's assistant uses radiographic exposure devices, associated equipment or sealed sources or conducts radiation surveys to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include the radiographer's physical presence at the site where the sealed sources are being used; the availability of the radiographer to give immediate assistance, if required; and the radiographer's direct observation of the assistant's performance of the operations. Contrary to this requirement, on numerous occasions between 1994 and 1998, the OI investigation determined that Mr. Rochelle permitted assistant radiographers to conduct radiographic operations without the direct supervision of a qualified radiographer. The conclusion that assistants performed unsupervised radiography is based on corroborating statements from multiple assistant radiographers regarding the level of supervision they received, as well as Mr. Rochelle's testimony to OI. Mr. Rochelle stated to OI that assistants were supervised; however, they were not constantly surveilled, i.e., observed. As stated previously, 10 CFR 34.46(c) requires direct observation by a qualified radiographer of an assistant's performance of operations. Mr. Rochelle was a knowledgeable and experienced radiographer who had been personally tested and tested others on the requirements of 10 CFR 34.46.

Based on these facts, the evidence developed by OI indicated that Mr. Rochelle's failure to comply with 10 CFR 34.46 appeared to have been deliberate, and thus, constituted a violation of 10 CFR 30.10, "Deliberate Misconduct." 10 CFR 30.10 prohibits any employee of a licensee from deliberately engaging in activities which cause a licensee to be in violation of any rule, regulation, or order, or any term, condition or limitation of any license.

In addition, on February 6, 1998, an inspection was conducted of the Licensee's activities at the Puerto Rico Electric Power Authority's Costa Sur Power Station, Guayanilla, Puerto Rico. During the inspection, the inspector observed Mr. Rochelle performing

radiographic operations and identified the following violations: (1) The creation of radiation levels in unrestricted areas in excess of the requirements in 10 CFR part 20.1301; (2) the failure to survey and monitor areas surrounding the location where radiographic operations were being conducted as required by Condition 21, and Item 6.3.1 of the Application; (3) the failure to post radiation areas as required by 10 CFR 20.1902(a); and (4) the failure to control access to areas that were required to be restricted as required in License Condition 21, and Item 6.3.1 of the Application. 10 CFR 20.1301 requires each licensee to conduct operations so that the dose in any unrestricted area from external sources does not exceed two millirems in any one hour. 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." Condition No. 21 of License No. 52-19438-01 required, in part, that the Licensee conduct its licensed radiation safety program in accordance with the statements, representations and procedures contained in the License application dated October 25, 1991. Section 6.3.1 of the application dated October 25, 1991, required that frequent surveys and continuous monitoring be made at all areas where a source is being exposed. In addition, Section 6.1.1 of the application dated October 25, 1991, stated, in part that, "A restricted area is that area into which the radiographer must control access for the purpose of radiation safety. This restriction must be extended to include those areas containing radiation levels such that a person continuously present in the area could receive an exposure in excess of 2 millirem in any one hour."

During the inspection, the inspector measured radiation levels in an unrestricted area in excess of two millirem in one hour (approximately 22 millirem in one hour) on Level 6 of the facility as a result of radiography being conducted by Mr. Rochelle, contrary to the requirements of 10 CFR 20.1301. The area was not posted as a Radiation Area as required by 10 CFR 20.1902(a) nor controlled for access as required by the License. Immediately following the radiographic exposure, the inspector advised Mr. Rochelle of the violations, the applicable License requirements, the need for surveys and continuous monitoring, and the correct methodology for conducting the activities. Notwithstanding this notification, Mr. Rochelle immediately conducted another radiographic

exposure. During this exposure, the inspector observed that neither Mr. Rochelle nor the assistant radiographer were performing surveys or monitoring as required by the License. Independent surveys performed by the inspector identified an unrestricted area on Level 9 of the facility with radiation levels in excess of two millirem in one hour (approximately 6 millirem in one hour), contrary to the requirements of 10 CFR 20.1301. In addition, this area was not posted as a Radiation Area in accordance with 10 CFR 20.1902(a). Upon being advised of the excess radiation levels on Level 9, Mr. Rochelle confirmed the measurements obtained by the inspector; however, he failed to take action to post or control access to the area through the remainder of the radiographic exposure.

Based on the above facts, the NRC has determined that Mr. Rochelle's failures to comply with 10 CFR 20.1301, 10 CFR 20.1902(a), and Items 6.3.1 and 6.1.1 of the License application dated October 25, 1991, during the second radiographic exposure observed by the inspector on February 6, 1998, appeared to have been deliberate, and thus, constitute additional violations of 10 CFR 30.10. This determination was based on the fact, that following the first radiographic exposure when an excessive radiation level was identified, Mr. Rochelle was put on notice of the requirements governing radiographic operations by the inspector, yet continued to act in violation of NRC requirements (failed to take action to comply).

On March 6, 2000, the NRC sent a letter to Mr. Rochelle advising him that five apparent violations had been identified involving him, and that his actions appeared to be in violation of 10 CFR 30.10, "Deliberate Misconduct." The letter offered Mr. Rochelle the opportunity to either attend a predecisional enforcement conference or respond to the violations in writing. In a letter received by the NRC on April 11, 2000, Mr. Rochelle responded to the apparent violations. In his response, Mr. Rochelle denied the violation regarding his failure to survey and monitor areas surrounding the location where radiographic operations were being conducted on February 6, 1998, but admitted that the other violations had occurred. Mr. Rochelle stated that if he had gone to the barricades to perform the survey he could not have fulfilled the requirement to maintain constant surveillance of the high radiation area. Mr. Rochelle's explanation did not refute the violation, but merely provided a rationale for why he chose

not to perform the required surveys and continuous monitoring.

III

Based on the above, the NRC has concluded that Mr. Rochelle engaged in deliberate misconduct when he: (1) Permitted assistant radiographers to conduct radiographic operations without the direct supervision of a qualified radiographer; (2) failed to survey and monitor areas surrounding the location where radiographic operations were being conducted; (3) failed to control access to restricted areas that were required to be restricted; (4) created excessive radiation levels in unrestricted areas; and (5) failed to post radiation areas. Mr. Rochelle's deliberate actions caused the Licensee to be in violation of several regulatory requirements, and therefore, constitute violations of 10 CFR 30.10. The NRC must be able to rely on licensees and their employees to fully comply with NRC requirements, including the requirements to adequately supervise licensed activities performed by assistant radiographers and implement adequate radiological controls during the conduct of radiographic operations.

In view of the foregoing, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with NRC requirements and that the health and safety of the public would be protected if Mr. Rochelle were permitted to be involved in NRC-licensed activities at this time. Therefore, the public health, safety and interest require that Mr. Rochelle be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Rochelle is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period and to notify the NRC of his involvement in all subsequent NRC-licensed activities for five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Rochelle's conduct are 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 30.10 and 10 CFR 34.46, 10 CFR 20.1301, 10 CFR 20.1902(a), and Condition 21 of the NDTs License, *it is hereby ordered, effective immediately, that:*

1. Mr. Johnny Lee Rochelle 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. If Mr. Rochelle is currently performing licensed activities for another licensee in an area of NRC jurisdiction, 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.

3. For a period of five years after the one year prohibition has expired, Mr. Rochelle shall, within 20 days of his acceptance of subsequent employment offers involving his performance of NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice of his employment to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, including 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. Rochelle shall include a statement of his commitment to compliance with regulatory requirements and a statement regarding why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, U.S. Nuclear Regulatory Commission may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Johnny Lee Rochelle of good cause.

V

In accordance with 10 CFR 2.202, Mr. Rochelle must, and any 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 its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. 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. Rochelle or other

persons 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, Rulemakings and Adjudications Staff, 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 Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303-3415 and to Mr. Rochelle, if the answer or hearing request is by a person other than Mr. Rochelle. If a person other than Mr. Rochelle 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. Rochelle 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. Rochelle, may, in addition to demanding a Hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediately effectiveness of the Order on the ground that the Order, including the need for immediately effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request 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. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 17th day of October 2000.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

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