

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.

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 effective and 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.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 31st day of March 1999.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99-8870 Filed 4-8-99; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[IA 98-066, EA 98-538, Docket No. 150-00019, License No. MD-33-095-01 (expired)]

Dale Todd and Roof Systems Design, Inc., Bayamon, Puerto Rico 00961; Order Prohibiting Involvement in NRC Licensed Activities

I

Mr. Dale Todd is employed as the President of Roof Systems Design, Inc. (RSDI). RSDI is a Pennsylvania Corporation, formerly doing business in Laurel, Maryland and now doing business in Bayamon, Puerto Rico. RSDI (a Maryland Licensee) possessed and used radioactive materials at its Laurel, Maryland facility under the authority of Maryland License No. MD-33-095-01, Amendment No. 2, issued by the Maryland Department of the Environment (MDE), Radioactive Materials and Compliance Division (RMCD) on May 31, 1994, pursuant to the Maryland Radiation Act, and in reliance on statements and representations made by RSDI. RSDI's Maryland license authorized RSDI to receive, acquire, possess and transfer, within the State of Maryland, Americium-241 (not to exceed 50 millicuries per source) contained in Troxler model 3216 moisture gauges used to locate areas of high moisture content in roof systems. On May 31, 1998, Maryland License No. MD-33-095-01, Amendment No. 2, expired.

II

On April 23, 1998, the Nuclear Regulatory Commission (NRC) was notified by MDE/RMCD, that Mr. Todd had moved RSDI equipment and operations to the Commonwealth of Puerto Rico, an area within the NRC's jurisdiction. An investigation by the NRC Office of Investigations (OI) was initiated on May 8, 1998, to determine whether Mr. Todd and RSDI were in unauthorized possession of moisture gauges containing byproduct material, without a specific or general license issued by the NRC. Based on the evidence developed, OI determined that RSDI willfully possessed and used Troxler moisture gauges, containing byproduct material, in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC. Specifically, on May 8, 1998, Mr. Todd and RSDI were found to be in possession of four Troxler Model Number 3216 moisture gauges in Puerto Rico, each containing approximately 40 millicuries of Americium-241 without having obtained an NRC license, in violation of 10 CFR 30.3 and 10 CFR 150.20. In addition, based on statements Mr. Todd made to OI, the gauges were used at job sites in Puerto Rico, including Searle Pharmaceutical in 1992 and Ft. Buchanan and Intel in Las Piedras in September 1997 without a specific or general license issued by the NRC, in violation of 10 CFR 30.3.

Mr. Todd acknowledged to OI that he was aware that the jobs in Puerto Rico required an NRC license and that one had not been obtained. In addition, Mr. Todd told OI that he and RSDI also conducted licensed activities in New Jersey, Pennsylvania, and Virginia, areas of NRC jurisdiction, without a specific or general NRC license.

On May 12, 1998, Confirmatory Action Letter (CAL) 2-98-003 was sent to Mr. Todd confirming that he agreed to transfer the four RSDI gauges to an authorized recipient by June 7, 1998.

Mr. Todd confirmed that the four moisture gauges were transferred to an authorized recipient by letter to Mr. Mark Lesser of the NRC, dated June 11, 1998. In addition to the May 12, 1998 CAL, the NRC also sent Mr. Todd a December 30, 1998 letter that informed him of the terms of the Confirmatory Order and that requested Mr. Todd to inform the NRC whether he consented to the issuance of the Order. Mr. Todd informed the NRC in a facsimile dated December 31, 1998, that he understood the terms of this Order and that he consented to the issuance of the Order; however, he expressed reservation concerning the scope of the rights he

was waiving. By letter dated January 11, 1999, a Confirmatory Order was forwarded to Mr. Todd for his signature. Subsequently, on February 18, 1999, NRC contacted Mr. Todd to discuss the proposed Order, at which time he indicated agreement with its provisions and his intent to sign and facsimile the Order to the NRC. To date, no response has been received from Mr. Todd.

III

The Commission's regulations in 10 CFR 30.3 specify that, except for persons exempt as provided in Parts 30 or 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued by the NRC. In accordance with 10 CFR 150.20(a), any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted an NRC general license to conduct the same activity in a non-Agreement State, provided the provisions of 10 CFR 150.20(b)(1) have been met. Pursuant to 10 CFR 150.20(b)(1), persons engaging in such activity must file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office. Based on the facts set forth above in Part II, and the fact that Mr. Todd and RSDI never filed an application for a specific license or obtained a general license under 10 CFR part 150 by filing NRC Form 241 and/or maintaining a Maryland office, the NRC has concluded that Mr. Todd and RSDI willfully possessed and used Troxler moisture gauges, without a specific or general license issued by the NRC, in violation of 10 CFR 30.3. Furthermore, based on the facts that (1) Mr. Todd told OI that he knew that his and RSDI's activities in Puerto Rico required an NRC license and (2) Mr. Todd chose not to obtain an NRC license, the NRC has concluded that Mr. Todd and RSDI have engaged in deliberate misconduct, in violation of 10 CFR 30.10. Both Mr. Todd's and RSDI's past activities raise serious doubt as to whether they can be relied upon to comply with NRC requirements in the future.

Mr. Todd's and RSDI's failure to obtain a specific or general license resulted in the NRC being uninformed that activities involving the use of radioactive materials were being conducted in areas of NRC jurisdiction. Because of Mr. Todd's and RSDI's failure to file NRC Form 241, the NRC

was denied the opportunity to inspect the licensee's facility and to verify that radioactive materials were being safely used and stored. Furthermore, the NRC was informed by the State of Maryland that Mr. Todd and RSDI committed a similar violation as a Maryland Licensee. Specifically, RSDI was issued a civil penalty in 1987 by the State of Maryland for the use of radioactive material without a license.

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. Todd or RSDI were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Todd and RSDI be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Todd and RSDI are required to notify the NRC of their first involvement in NRC-licensed activities following the prohibition period.

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 30.3, 10 CFR 30.10 and 10 CFR 150.20, it is hereby ordered, that:

1. For a period of one (1) year from the date of this Order, Mr. Dale Todd and RSDI are prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which require 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. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five (5) days prior to the first time that Mr. Dale Todd and/or RSDI engage in or exercise control over NRC-licensed activities, during a period of five (5) years following the one year prohibition stated in Section IV.1 above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, shall be notified in writing of 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 be accompanied by a statement, under oath or affirmation, that Mr. Dale Todd and/or RSDI understand the applicable NRC requirements and are committed to compliance with NRC requirements. Mr. Dale Todd and/or RSDI also should provide a basis as to why the Commission should have confidence that Mr. Dale Todd and/or RSDI 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. Dale Todd and/or RSDI of good cause.

V

In accordance with 10 CFR 2.202, Mr. Todd and RSDI 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. Todd and RSDI 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 Deputy Assistant General Counsel for 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. Todd, if the answer or hearing request is by a person other than Mr. Todd. If a person other than Mr. Todd 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. Todd or RSDI 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.

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.

Dated this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99-8871 Filed 4-8-99; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41243; File No. SR-NASD-99-09]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of an Agency Quotation in Nasdaq

April 1, 1999.

On February 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposal to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol ("Agency Quote"). Notice of the proposed rule change was published for comment on March 11, 1999.¹

To give the public additional time to comment on the proposal, the Commission is extending the comment period for the NASD's Agency Quote proposal to June 1, 1999. A copy of the proposed rule change is available in the Commission's Public Reference Room in File No. SR-NASD-99-09.

Interested persons are invited to submit written data, views, and

¹ Securities Exchange Act Release No. 41128 (march 2, 1999), 64 FR 12198.