

NUCLEAR REGULATORY COMMISSION

[IA-00-008]

In the Matter of Don Nottingham; Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately)**I**

Mr. Don Nottingham served as a senior radiographer at NDT Services, Inc. (NDTS) from 1994 through 1995. 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

On August 26, 1997, an investigation by the NRC Office of Investigations (OI) was initiated 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 event 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 event. The investigation did not substantiate that discrimination occurred, but identified numerous examples of NDTS's willful failure to comply with NRC regulations, including the conduct of unsupervised radiography by assistant radiographers.

The OI investigation determined that Mr. Nottingham, while serving as a senior radiographer, permitted assistant radiographers to perform unsupervised radiography. This is contrary to 10 CFR 34.46, which 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. Mr. Nottingham was an experienced radiographer who had been tested on the requirements of this regulation.

The OI investigation further determined that, in early 1995, the Licensee experienced a source disconnect at the Phillips Puerto Rico Core site. The source disconnect occurred when a 75-curie iridium-192 radiography source assembly failed to retract to its fully shielded position due to improper handling by the assistant radiographer. The OI investigation determined that the assistant radiographer had conducted the radiographic operations without direct observation by a radiographer, and that Mr. Nottingham had been responsible for permitting the assistant radiographer to conduct radiographic operations without direct observation, which contributed to the source disconnect. OI was unable to interview Mr. Nottingham during the investigation despite several attempts. Nonetheless, the conclusion that the assistant performed radiography without direct observation of a qualified radiographer is based on the corroborating statements of multiple assistant radiographers to OI regarding the level of supervision they received, as well as the testimony of another radiographer. This radiographer stated that assistants were supervised; but not constantly surveilled, *i.e.*, directly observed. As stated previously, 10 CFR 34.46(c) requires direct observation by a qualified radiographer of an assistant's performance of operations. In addition, Mr. Nottingham was an experience radiographer who had been tested on the requirement of 10 CFR 34.46 relating to the conduct of radiographic operations.

Based on these facts, the evidence developed by the investigation indicated that Mr. Nottingham knew the requirement in 10 CFR 34.46(c) regarding "direct observation" of the assistant's performance, and allowed the assistant radiographer to perform radiography without such direct

observation of his performance. The evidence developed by the investigation therefore indicated that Mr. Nottingham's failure to comply with 10 CFR 34.46 was deliberate; and thus, constituted a violation of 10 CFR 30.10, "Deliberate Misconduct". Specifically, 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.

A certified letter dated March 6, 2000, to Mr. Nottingham advised that his actions appeared to constitute a violation of 10 CFR 30.10, and he was requested to participate in a predecisional enforcement conference to discuss the apparent violation. The certified mail return receipt indicates that on March 16, 2000, this letter was received by Ms. Evelyn Nottingham. To date, no response has been received from Mr. Nottingham.

III

Based on the above, the NRC has concluded that Mr. Nottingham engaged in deliberate misconduct when he permitted assistant radiographers to conduct radiographic operations without his direct supervision that caused the Licensee to be in violation of 10 CFR 34.46 and is, therefore a violation 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 requirement to adequately supervise licensed activities performed by assistant radiographers.

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 will be protected if Mr. Nottingham were permitted to be involved in NRC-licensed activities at this time. Therefore, the public health, safety and interest require that Mr. Nottingham be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Nottingham is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period and all subsequent employment in NRC-licensed activities for five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nottingham's conduct 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 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.

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