

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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IA-12-045

Michael P. Cooley
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

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ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Michael P. Cooley is a former Environmental Health and Safety Specialist, for Shaw, Stone & Webster (Shaw) at South Carolina Electric & Gas Company's Virgil C. Summer Nuclear Station (Licensee). The licensee is the holder of License No. NPF-12 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on August 6, 1982, and renewed on April 23, 2004. The license authorizes the operation of the Virgil C. Summer Nuclear Station (facility) in accordance with the conditions specified therein. The facility is located on the licensee's site in Jenkinsville, South Carolina.

II

On January 16, 2013, an investigation was completed by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The purpose of the investigation was to review the facts and circumstances surrounding Mr. Michael P. Cooley's actions with respect to his completion of a V. C. Summer Personnel History Questionnaire (PHQ) to obtain unescorted access authorization (UAA) to the facility.

In Section III of the PHQ titled "Criminal History Self-Disclosure," Mr. Cooley answered "no" to a question that, in part, asked, "Have you ever been held, detained, taken into custody, charged, arrested, indicted, convicted for a violation of law, regulation, or ordinance (e.g., felony, misdemeanor, traffic, etc.), or do you have such a case pending or currently under indictment, on probation, parole, work release, or subject to any other control of court?"

During the subsequent background investigation conducted by the licensee in August and September 2010, a criminal record search returned a U.S. Federal Bureau of Investigation (FBI) record dated August 31, 2010, which revealed Mr. Cooley had been arrested on March 17, 2010, in Lucedale, Mississippi and charged with four counts of arson. The FBI record also revealed that the arson charges had been bound over to a grand jury in Mississippi, and were pending at the time Mr. Cooley completed the PHQ. The licensee's access authorization staff questioned Mr. Cooley about the failure to list the arrest and charges on the PHQ. Mr. Cooley explained his lawyer said there was no need to list the arrest because the charges were dismissed. The licensee's access staff accepted this explanation and asked Mr. Cooley to provide a document showing the charges were dismissed. Mr. Cooley fabricated a document that falsely stated the arson charges had been dismissed and he submitted it to the licensee's access authorization staff. The access authorization staff reviewed and adjudicated the forged document and found it acceptable. Mr. Cooley was granted the UAA to the V. C. Summer Nuclear Station. Mr. Cooley was employed at the site from August 30, 2010 until March 3, 2011, when the licensee learned the arson charges had not been dismissed, but were still pending. Mr. Cooley was terminated.

During questioning by OI, Mr. Cooley admitted he was deliberately untruthful when answering "no" to the criminal history question in the PHQ, and admitted to deliberately fabricating the court record to conceal potentially disqualifying information.

In a letter dated June 5, 2013, the NRC provided Mr. Cooley the results of the OI investigation. The letter informed Mr. Cooley the NRC was considering escalated enforcement action against him for: (1) the deliberate failure to disclose an arrest for arson in the PHQ criminal history, information that was necessary for access staff to consider in making determinations regarding his trustworthiness and reliability, in apparent violation of Title 10 of the *Code of Federal Regulations* at 10 CFR 73.56(d)(2); and (2) the deliberate submittal of information he knew to be incomplete or inaccurate, in apparent violation of the requirements of 10 CFR 50.5(a)(2). Specifically, to support his assertion that arson charges had been dismissed, Mr. Cooley submitted a forged document dated September 14, 2010, that falsely stated arson charges had been dismissed by a Mississippi county court. At the time the document was submitted to the licensee's access authorization staff, the arson charges were pending. This information was material because it formed the basis for the licensee's determination that Mr. Cooley was trustworthy, reliable, and suitable for the granting of UAA. The NRC regulations at 10 CFR 73.56(c) require that licensees provide high assurance that individuals granted unescorted access are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety, or the common defense and security, including the potential to commit radiological sabotage.

The NRC letter dated June 5, 2013, offered Mr. Cooley a choice to respond to the apparent violations within 30 days of the date of that letter, to attend a Predecisional Enforcement Conference, or to request Alternative Dispute Resolution (ADR) and the use of mediation to resolve any possible disagreement over: (1) whether the violation occurred; and (2) the appropriate enforcement action. During a telephone conversation with NRC representatives on June 14, 2013, Mr. Cooley stated that he did not intend to provide a written response or request a Predecisional Enforcement Conference or ADR.

III

Based on the above, the NRC has concluded that Mr. Michael P. Cooley, a former Environmental Health and Safety Specialist for Shaw, Stone & Webster (Shaw) at South Carolina Electric & Gas Company's Virgil C. Summer Nuclear Station, engaged in deliberate misconduct that resulted in a violation of the requirements of Title 10 of the *Code of Federal Regulations* at 10 CFR 73.56(d)(2). In addition, Mr. Cooley deliberately submitted to the licensee information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of the NRC regulations at 10 CFR 50.5(a)(2). Mr. Cooley's deliberate misconduct put the License in violation of 10 CFR 73.56 and 10 CFR 50.9.

The NRC must be able to rely on a licensee, its employees, and contractors to comply with NRC requirements, including the requirement that information provided to the NRC be complete and accurate in all material respects. Mr. Cooley's misstatements on his PHQ and his preparation and submission of a fabricated court document caused the licensee to violate 10 CFR 73.56(d)(2) and 10 CFR 50.9. Mr. Cooley's deliberate misconduct raises serious doubt as to whether he can be relied upon to comply with NRC regulatory requirements and to provide complete and accurate information to the NRC.

Consequently, I lack reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected, if Mr. Cooley were permitted to be involved in NRC-licensed activities. Therefore, the public health and safety, and the common defense and security of the nation require that Mr. Cooley be prohibited from any involvement in NRC-licensed activities for a period of 5 years following the effective date of this Order. Additionally, Mr. Cooley is required to notify the NRC if

he is employed in NRC-licensed activities following the 5 year prohibition period; this restriction is for a period of 1 year.

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, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Cooley is prohibited for a period of 5 years, from the effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed activities are activities conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. This Order shall be effective 30 days following its issuance and shall remain in effect for a period of 5 years.
3. If Mr. Cooley is currently involved with NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of his employer, and provide a copy of this Order to the employer.
4. For a period of 1 year after the 5 year period of prohibition has expired, Mr. Cooley shall, within 30 days of acceptance of his first employment offer involving NRC-licensed activities, or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1, provide notice to the Director, Office of Enforcement, U. S.

Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is or will be involved in NRC-licensed activities. In the notification, Mr. Cooley shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

Mr. Michael P. Cooley is not required to respond to this Order; however, if he chooses to respond, he must submit a written answer to this Order under oath or affirmation within 30 days of issuance in accordance with 10 CFR 2.202.

Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its issuance. In addition, Mr. Cooley, and any other person adversely affected by this Order, may request a hearing on this Order within 30 days of its issuance date. Where good cause is shown, consideration will be given to extending the time to answer or 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, 20555-001 and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule at 10 CFR 2.302. The E-Filing process requires participants submit and serve all adjudicatory documents over the internet, or to physically deliver or mail a copy of the documents on optical storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant submits a document electronically to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in obtained from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

After the Office of the Secretary has created a docket and a participant has obtained a digital ID, the participant may submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and other persons who have advised the Office of the Secretary that they wish to participate in the proceeding. The filer need not serve the documents on participants separately. Therefore, others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek

assistance by contacting the NRC Meta System Help Desk through the “Contact Us” link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in paper format are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing, if the presiding officer subsequently determines the reason for the exemption no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such

information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and constitute a Fair Use application.

If a person other than Mr. Cooley requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. 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 30 days from the issuance date 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 at Rockville, Maryland, this 10th day of March 2014

For the Nuclear Regulatory Commission

/RA/

Roy P. Zimmerman, Director
Office of Enforcement