

October 17, 2000

IA-00-006

Mr. Rodney Lillard
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Lillard:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct in violation of 10 CFR 30.10 of the Commission's regulations. Specifically, while Radiation Safety Officer and President of NDT Services Inc., you failed to report a 1995 source disconnect event involving the inability to retract a 75 curie iridium-192 radiography source assembly to its fully shielded position or ensure that a report was made to the NRC. In addition, you failed to inform an NRC inspector of the event when specifically questioned about prior reportable events during a June 1995 inspection. Based on your actions, the Order prohibits your involvement in NRC-licensed activities for a period of five years and requires you to notify the NRC of your first involvement in NRC-licensed activities and all subsequent involvement in such activities for five years following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to a civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response you provide will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,
/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Enclosure and cc: See Page 2

R. Lillard

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities

cc w/enclosure:
Commonwealth of Puerto Rico

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Rodney Lillard

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IA-00-006

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Rodney Lillard served as Radiation Safety Officer (RSO) and President of NDT Services, Inc. (NDTS) in 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.

The NRC Office of Investigations (OI) initiated an investigation 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 event involving NDTs' 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 the willful failure to comply with NRC regulations, including the deliberate failure to report a source disconnect event.

The OI investigation determined that in early 1995, NDTs experienced a source disconnect event 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. Mr. Lillard stated in his testimony to OI that he created a record of the event; however, no such record was produced during the investigation. The NRC has no record or other indication that the former RSO or any other NDTs employee reported the event to the NRC prior to the time its occurrence was alleged in August 1997.

In 1995, 10 CFR 34.30 required that the Licensee provide a written report to the NRC within 30 days of the occurrence of: (1) an unintentional disconnection of the source assembly from the control cable; (2) an inability to retract the source assembly to its fully shielded position and secure it in this position; or (3) the failure of any component (critical to safe operation of the

device) to properly perform its intended function. The OI investigation determined that in 1995, Mr. Lillard, as the RSO, deliberately failed to report the source disconnect event involving the inability to retract a 75 curie iridium-192 radiography source assembly to its fully shielded position or ensure that a report was made to the NRC.

In addition, 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the Licensee, shall be complete and accurate in all material respects. During a June 1995 inspection, Mr. Lillard was asked by the NRC inspector whether any reportable events had occurred since the previous inspection. In response, Mr. Lillard indicated that the Licensee had not had any reportable events since the previous inspection when, in fact, the Licensee had experienced the source disconnect event which Mr. Lillard knew was reportable. This deliberate failure to inform the NRC of the event was material to the NRC because it prevented the NRC from exercising its regulatory responsibility to evaluate the event, which could have had safety implications. In addition, licensee officials are expected to provide complete and accurate information to the NRC, in order that the NRC may have the requisite assurance that activities are being conducted safely and in accordance with regulatory and license requirements.

Mr. Lillard was aware, as evidenced by his testimony to OI, that: (1) the source disconnect event had occurred; (2) the event was reportable to the NRC; (3) as the RSO at the time of the event, it was his responsibility to report it to the NRC; and (4) that the NRC was, at the time, investigating a similar source disconnect event involving NDTs that occurred in 1993. Based on these facts, the NRC determined that Mr Lillard's failures to comply with 10 CFR 34.30 and 30.9(a) appeared to be deliberate; and thus, constituted violations 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. This regulation also prohibits any employee of a licensee from deliberately submitting to the NRC or a licensee, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

By letter dated March 6, 2000, Mr. Lillard was advised that his actions appeared to be in violation of 10 CFR 30.10 and was offered the opportunity to either attend a predecisional enforcement conference or respond to the two violations in writing. Subsequently, on April 19, 2000, Mr. Lillard requested a copy of his transcribed interview with OI in order to support his possible participation at a predecisional enforcement conference. On May 3, 2000, Mr. Lillard was provided his transcript via certified mail. The certified mail return receipt indicated that Mr. Lillard received his transcript on May 10, 2000. To date, no response has been received from Mr. Lillard.

III

Based on the above, the NRC has concluded that Mr. Lillard engaged in deliberate misconduct when he: (1) failed to report or ensure that a report was made to the NRC within 30 days of the occurrence of a 1995 source disconnect event; and (2) failed to provide complete and accurate information to the NRC when he advised an NRC inspector during a June 1995 inspection that no reportable events had occurred. Mr. Lillard’s deliberate actions in both instances caused the Licensee to be in violation of 10 CFR 34.30 and 10 CFR 30.9, respectively, and are, therefore, 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 reporting requirements for events involving licensed material, and to communicate with accuracy and completeness on regulatory matters.

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. Lillard were permitted to be involved in NRC-licensed activities at this time. Therefore, the public health, safety and interest require that Mr. Lillard be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Lillard is required to notify the NRC of his first employment and all subsequent employment in NRC-licensed activities for a period of five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Lillard'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 30.9, 10 CFR 30.10 and 10 CFR 34.30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Rodney Lillard is prohibited for five years 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. Lillard 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 five year prohibition has expired, Mr. Rodney Lillard shall, within 20 days of the date 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. Rodney Lillard 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. Rodney Lillard of good cause.

In accordance with 10 CFR 2.202, Mr. Lillard 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. Lillard 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. Lillard if the answer or hearing request is by a person other than Mr. Lillard. If a person other than Mr. Lillard 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. Lillard 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. Lillard, 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

/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research, and State Programs

Dated this 17th day of October 2000