

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Cary W. Hedger

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IA-07-048

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

I

Cary W. Hedger was employed as the Operations Manager and Assistant Radiation Safety Officer (RSO) at Alpha Omega Services, Inc. (AOS) in January 2003. Currently, Mr. Hedger is the RSO, President, and an owner of AOS. In January 2003, AOS was the holder of a U.S. Nuclear Regulatory Commission (NRC or Commission) Certificate of Compliance (CoC) No. 5979, Revision 10, for the Model No. 5979 package (NRC Docket Number 71-5979) issued by the NRC, and an NRC-approved Quality Assurance (QA) Program Approval holder (NRC Docket Number 71-0086) pursuant to Part 71 of Title 10 of the *Code of Federal Regulations* (10 CFR). The CoC authorized use of the Model No. 5979 package under the general license provisions of 10 CFR 71.12 [currently 10 CFR 71.17]. The QA Program Approval satisfied the requirements of 10 CFR 71.12(b) [currently 10 CFR 71.17(b)], and 10 CFR 71.101(c) [currently 10 CFR 71.101(c)(1)] by authorizing activities be conducted under criteria of Subpart H of 10 CFR Part 71, "Quality Assurance."

II

On November 18, 2004, an NRC inspection was conducted at the AOS facility. During that inspection, certain nonconformances regarding a shipping package, serial number 1B, CoC

No. 5979, Model No. 5979, were brought to the NRC's attention. Subsequently, concerns about the nonconformances led to an investigation by the NRC's Office of Investigation.

Based on the investigation and Mr. Hedger's presentation at a November 8, 2007, pre-decisional enforcement conference, the NRC has concluded that Mr. Hedger engaged in two examples of deliberate misconduct in violation of 10 CFR 71.8, "Deliberate misconduct."

First, Cary W. Hedger deliberately provided materially inaccurate information to an NRC licensee and to a contractor to the licensee. Specifically, in January 2003, Mr. Hedger performed a maintenance inspection of a Model 5979 shipping package, serial number 1B, NRC Certificate of Compliance (CoC) No. 5979, and certified that the package conformed to CoC No. 5979, Revision 10. Mr. Hedger purposely indicated on the maintenance inspection checklist that the cask end caps conformed to the CoC when he knew they did not. The cask end caps did not conform to the drawings in the CoC because they were physically (weight and materials) and dimensionally (end cap thickness and length of bolts) different from the approved end cap designs. AOS then returned the package to its owner, Foss Therapy Services (FTS), along with the inaccurate maintenance inspection checklist. SPEC was an NRC licensee pursuant to 10 CFR Part 110, and a CoC and QA Program Approval holder under 10 CFR Part 71. FTS subsequently provided the package to Source Production and Equipment Company (SPEC) for export of licensed radioactive material on FTS's behalf. AOS specifically provided the inaccurate maintenance inspection checklist to FTS by, at minimum, giving it to an official of FTS, who in his capacity as a contractor to SPEC performed inspections of packages exported by SPEC. When performing pre-shipment inspections of the subject FTS package for SPEC, the contractor relied on the inaccurate checklist, instead of comparing the package to the drawings in CoC No. 5979, to certify that the package met all federal requirements. The

contractor also supplied the inaccurate maintenance inspection checklist to SPEC. The inaccurate checklist was material to the NRC because it concealed the fact that the package did not comply with CoC No. 5979.

Second, Cary W. Hedger deliberately caused an NRC licensee to violate NRC requirements. SPEC made at least three export shipments of licensed radioactive material between July 2003 and May 2004, when the Model No. 5979 package was in a nonconforming condition. SPEC relied upon its contractor's certification that the package met all federal requirements, and upon the inaccurate maintenance inspection checklist created by Mr. Hedger. Because SPEC used the nonconforming package to deliver for transport and to transport licensed material, and pursuant to 10 CFR 71.17(c)(2) [formerly 71.12(c)(2)], "General license: NRC-approved package," SPEC did not have a license to deliver for transport or to transport licensed material. As a result, SPEC violated 10 CFR 71.3, "Requirement for license," which provides that a license is necessary to deliver for transport or to transport licensed material.

III

Based on the above, it appears that Cary W. Hedger has engaged in deliberate misconduct in violation of 10 CFR 71.8, "Deliberate misconduct." The NRC must be able to rely on the certificate and QA Program Approval holder and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Hedger's actions in causing SPEC, an NRC Licensee, to violate 10 CFR 71.3, and his misrepresentations to SPEC, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

While the NRC is not aware of actual safety consequences associated with the shipments, the potential safety consequences were significant, considering the potential adverse impact of shipping radioactive materials in an unapproved package design that had not been demonstrated to meet the transportation package approval standards for both normal and hypothetical accident conditions as required by 10 CFR Part 71. Of the many controls that are in place to assure public health and safety during the transport of radioactive materials, one of the most important is that the configuration of the package conforms to that analyzed and approved by the NRC staff, through the package CoC process, so as to assure integrity of the package during transportation for both normal and hypothetical accident conditions. In this case, the package integrity is of particular safety concern given the quantities of licensed radioactive material that were transported between July 2003 and May 2004.

Consequently, I lack the requisite reasonable assurance that licensed, certificated or QA activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected, if Cary W. Hedger is permitted at this time to be involved in NRC-licensed, certificated or QA activities. Therefore, the public health, safety, and interest require that Mr. Hedger be prohibited from any involvement in all NRC-licensed activities, including those associated with 10 CFR Part 71 packaging QA Program Approval or certificate holder activity, for a period of three years from the date of this Order. Ordinarily, NRC would prohibit involvement in licensed activities for a period of five years in a case such as this. However, the NRC is mitigating the prohibition to three years because Mr. Hedger identified certain nonconformances in the shipping package number 1B, CoC No. 5979, Model No. 5979, to the NRC. Although he did not identify the nonconforming end-caps to the NRC, Mr. Hedger's disclosure ultimately led to the discontinued use of the package in the nonconforming condition. Furthermore, pursuant to 10 CFR 2.202, "Orders," I find that the significance of Mr. Hedger's

conduct described above 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 71.8, and 10 CFR 150.20, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT:

1. Cary W. Hedger is prohibited for three 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, the licensing, packaging certificate and QA program approval requirements of 10 CFR Part 71, and those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Cary W. Hedger is currently involved with another licensee in NRC-licensed activities, other than AOS, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of that licensee, and provide a copy of this Order to the employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Cary W. Hedger of good cause.

In accordance with 10 CFR 2.202, Cary W. Hedger must submit an answer to this Order within 20 days of its issuance. In addition, Cary W. Hedger, and any other persons adversely affected by this Order 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, and include a statement of good cause for the extension.

The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order. The answer shall set forth the matters of fact and law on which Cary W. Hedger or other persons adversely affected relies and the reasons as to why this Order should not have been issued. The answer may consent to the Order. Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to: the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to Cary W. Hedger if the answer is by a person other than Cary W. Hedger.

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

If Cary W. Hedger or a person whose interest is adversely affected requests a hearing, 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), Cary W. Hedger, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August, 28 2007, (72 Fed. Reg. 49,139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time 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 EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any 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 is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, 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 this manner 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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. With respect to copyrighted works, except for limited excerpts that serve the purpose of

the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order 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 REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/
Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal and Compliance Programs
Office of the Executive Director for Operations

Dated this 20th day of December 2007