

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Joseph S. Shepherd

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IA-08-014

ORDER PROHIBITING INVOLVEMENT IN
10 CFR PART 71 ACTIVITIES AND
CONDITIONING OTHER NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Joseph S. Shepherd was a contractor to Source Production and Equipment Company, Inc. (SPEC), of St. Rose, Louisiana. SPEC was a registered user of a U.S. Nuclear Regulatory Commission (NRC or Commission) Model No. 5979 Shipping Package (Certificate of Compliance (CoC) No. 5979, Revision 10), and an NRC-approved Quality Assurance (QA) Program Approval holder (NRC Docket Number 71-0102) 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 to be conducted under criteria of Subpart H of 10 CFR Part 71, "Quality Assurance." SPEC also was an NRC export licensee pursuant to 10 CFR Part 110. SPEC hired Mr. Shepherd to perform certain maintenance inspections required by the NRC CoC for the Model No. 5979 shipping cask prior to making shipments of NRC licensed radioactive material to Mexico.

II

During an NRC inspection conducted on November 18, 2004, at Alpha-Omega Services, Inc. (AOS), an NRC certificate holder and Quality Assurance (QA) program holder, certain nonconformances regarding a shipping package, serial number 1B, CoC No. 5979, Model No. 5979, were brought to the NRC's attention. The end-caps of the shipping package did not conform to the physical (weight and materials) and dimensional (end cap thickness and length of the bolts) configuration specified by the CoC. In addition, holes had been drilled in the turret of the shipping package. Foss Therapy Services (FTS) had purchased the shipping package from AOS in 2001. FTS holds a State of California radioactive materials license and coordinates source exchanges and recycling for radiation therapy systems at various hospitals. FTS, however, is not an NRC licensee, authorized user, or certificate or QA program holder. AOS happened to be performing its annual inspection of the Model No. 5979 package when NRC conducted its November 18, 2004, inspection at AOS.

The NRC also became aware during its November 18, 2004, inspection at AOS that FTS had been using SPEC, to ship byproduct material for FTS to Mexico. The NRC obtained shipping documents which confirmed that SPEC had used the nonconforming container between June 25, 2001, and May 20, 2004, to make export shipments to Mexico. SPEC hired Mr. Shepherd, an officer and co-owner of FTS, to perform inspections of the Model No. 5979 shipping package prior to three export shipments by SPEC on July 15, 2003, December 4, 2003, and May 20, 2004.

As a result of the NRC's November 18, 2004, inspection, the NRC's Office of Investigations (OI) initiated an investigation to determine whether SPEC had willfully violated NRC regulations relating to its export shipments to Mexico.

Based on the OI investigation, the NRC has concluded that Mr. Shepherd engaged in three examples of deliberate misconduct in violation of 10 CFR 110.7b, "Deliberate Misconduct."

First, on or about July 15, 2003, and December 4, 2003, and in violation of 10 CFR 110.7b(a)(2), Mr. Shepherd deliberately provided materially inaccurate information to SPEC in two checklists and in shipping papers concerning inspections of the Model No. 5979 shipping package. Specifically, Mr. Shepherd signed "OK" on all applicable steps of the FTS inspection checklists, and certified on the bills of lading that the package conformed to all national governmental regulations, signifying that Mr. Shepherd had performed all steps of the inspection and that the package conformed to the NRC CoC requirements. In fact, Mr. Shepherd did not perform step 2.4.A, which required that he remove and visually check six cask screws. The inaccurate information was material because it concealed that SPEC failed to conform to the CoC requirement that before shipment of the package, an inspection must be performed, including step 2.4.A.

By deliberately providing materially inaccurate checklists and bills of lading to SPEC on or about July 15, 2003 and December 4, 2003, Mr. Shepherd violated 10 CFR 110.7b(a)(1) because he deliberately caused SPEC to violate 10 CFR 71.3, "Requirement for License." 10 CFR 71.3 requires that all persons who deliver for transport, or who transport, NRC licensed material must have an NRC license to do so. 10 CFR 71.17, "General license; NRC-approved package", provides that a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to licensees who comply with the terms and conditions of the CoC. SPEC relied upon Mr. Shepherd's representations that he had completed all steps of the package inspection required by the CoC. As a result of Mr. Shepherd's deliberate provision of

materially inaccurate information, SPEC did not comply with the CoC, and thus SPEC delivered for transport and transported licensed material without the license required by 10 CFR 71.3.

Second, on or about May 20, 2004, and in violation of 10 CFR 110.7b(a)(2), Mr. Shepherd deliberately provided materially inaccurate information to SPEC in a checklist and in a bill of lading concerning an inspection of the Model No. 5979 package. Specifically, Mr. Shepherd signed “OK” on all applicable steps of the FTS inspection checklist and certified on the bill of lading that the package met all national governmental regulations, signifying that Mr. Shepherd had performed all steps of the inspection and that the package met all CoC requirements. In fact, Mr. Shepherd was not present and did not conduct any inspection of the CoC No. 5979 package. The inaccuracies were material because they concealed that Mr. Shepherd’s associate who did the inspection was not authorized or qualified to perform the inspection on SPEC’s behalf, and concealed that steps 2.4 through 2.8, required by the maintenance inspection procedures, were not performed.

By deliberately providing a materially inaccurate checklist and bill of lading to SPEC on or about May 20, 2004, Mr. Shepherd violated 10 CFR 110.7b(a)(1) because he deliberately caused SPEC to violate 10 CFR 71.3, “Requirement for License.” 10 CFR 71.3 requires that all persons who deliver for transport, or who transport, NRC licensed material must have an NRC license to do so. 10 CFR 71.17, “General license; NRC-approved package”, provides that a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to licensees who comply with the terms and conditions of the CoC. SPEC relied upon Mr. Shepherd’s representations that he had completed all steps of the package inspection required by the CoC. As a result of Mr. Shepherd’s deliberate provision of materially inaccurate

information, SPEC did not comply with the CoC, and thus SPEC delivered for transport and transported licensed material without the license required by 10 CFR 71.3.

Third, Mr. Shepherd violated 10 CFR 110.7b(a)(2) by deliberately providing materially inaccurate information to SPEC in a conversation around May 2004, in a fax dated January 12, 2005, and again in an e-mail of April 12, 2005, when Mr. Shepherd told SPEC that he had not authorized any modifications to the Model No. 5979 package. Mr. Shepherd told SPEC personnel that the only modifications to the package were holes drilled in the turret by someone else in Mexico. In June 2005, shortly after an OI interview in which Mr. Shepherd admitted to having authorized modifications to the package, Mr. Shepherd told SPEC that he did in fact authorize modifying the end caps by drilling larger holes. The inaccurate information was material because it concealed that the shipping package was rendered nonconforming by the modification Mr. Shepherd had authorized, and concealed that SPEC had delivered for transport or transported licensed material in a certified container without the license required by 10 CFR 71.3.

III

Joseph S. Shepherd entered into a plea agreement with the United States Department of Justice on August 22, 2008. Under the terms of that plea agreement, Mr. Shepherd agreed not to contest an NRC order that requires him to comply with the following, or substantially similar, provisions related to his involvement in NRC activities:

1. Not package any Type B shipments, nor prepare any paperwork, for a Type B shipment in any NRC jurisdiction.
2. Prepare and submit the following information to the NRC by the end of September 2008: a list of lessons learned and measures taken to avoid recurrence and a statement

describing the reasons that the NRC should have confidence that Mr. Shepherd will perform licensed activities in compliance with NRC regulations.

3. Prior to his conducting licensed activities in NRC jurisdiction, Mr. Shepherd will notify the NRC in writing no later than 5 business days of the planned work in order to facilitate inspections of his activities.
4. For a period of five years from the date of an Order, prior to his conducting licensed activities in NRC jurisdictions, Mr. Shepherd will notify customers that the NRC has issued an Order to him and will also make that Order available to customers.
5. Prepare a presentation and offer to give that presentation at an industry conference to include, at a minimum, a description of the violations, as well as the circumstances that led to the violations, lessons learned, and the corrective actions taken and planned to prevent recurrence. The presentation will also address the following: (1) acknowledgement that a condition occurred that resulted in violations of NRC requirements; (2) the need to establish an environment and culture that promotes regulatory compliance through the implementation of controls and processes; (3) the need to ensure that all employees are trained and oriented in NRC requirements; and (4) the importance of continued self-assessment of programs and processes to ensure that these programs and processes are delivering the desired outcomes. Mr. Shepherd agrees to advise the NRC of his compliance with this provision no later than one year from the date of an Order.
6. Take a Radiation Safety Officer course with emphasis on the regulatory interface within one year of the date of an Order in order to enhance his understanding of the importance of completeness and accuracy of information regarding activities subject to NRC and DOT regulation. Mr. Shepherd agrees to advise the NRC of his compliance with this provision no later than one year from the date of an Order.

7. If Mr. Shepherd should seek other employment involving NRC-regulated activities within five years from the date of an Order, Mr. Shepherd will provide that employer with a copy of any Order addressing the violations.

IV

Based on the above, it appears that Joseph S. Shepherd has engaged in deliberate misconduct in violation of 10 CFR 110.7b, "Deliberate misconduct." The NRC must be able to rely on its licensees and their employees and contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Shepherd'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 and whether the public health and safety can be assured if he is involved in NRC-licensed activities.

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 on July 15, 2003, December 4, 2003, and May 20, 2004.

Consequently, I lack the requisite reasonable assurance that Mr. Shepherd can be relied upon to comply with NRC requirements with honesty and integrity. Therefore, the public health, safety, and interest require that Mr. Shepherd be prohibited from any involvement in 10 CFR Part 71 activities, including the package certificate and quality assurance program requirements of 10 CFR Part 71, and that Mr. Shepherd's involvement in other NRC licensed activities be conditioned. Furthermore, pursuant to 10 CFR 2.202, "Orders," I find that the significance of Mr. Shepherd's conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

V

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 Part 71, 10 CFR 110.7b, and 10 CFR 150.20, IT IS HEREBY ORDERED,

EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Shepherd is prohibited from packaging any Type B shipments and from preparing any paperwork for a Type B shipment in any NRC jurisdiction.
2. Mr. Shepherd shall prepare a list of lessons-learned and identify measures taken to avoid recurrence of his violations. Mr. Shepherd shall also include a statement describing the reasons that the NRC should have confidence that Mr. Shepherd will perform licensed activities in compliance with NRC regulations. This information shall be submitted to the NRC by the end of September 2008.

3. Prior to his conducting licensed activities in NRC jurisdiction, Mr. Shepherd shall notify the NRC in writing no less than 5 business days in advance of the planned work in order to facilitate inspections of his activities. The notifications shall be made for a period of five years from the date of this Order.
4. Prior to his conducting licensed activities in any NRC jurisdiction, Mr. Shepherd shall notify customers that the NRC has issued this Order to him and shall also make this Order available to customers. The notifications shall be made for a period of five years from the date of this Order.
5. Mr. Shepherd shall prepare a presentation and offer to give that presentation at an industry conference. The presentation must include, at a minimum, a description of the violations, as well as the circumstances that led to the violations, lessons learned, and the corrective actions taken and planned to prevent recurrence. The presentation must also address the following: (1) acknowledgement that a condition occurred that resulted in violations of NRC requirements; (2) the need to establish an environment and culture that promotes regulatory compliance through the implementation of controls and processes; (3) the need to ensure that all employees are trained and oriented in NRC requirements; and (4) the importance of continued self-assessment of programs and processes to ensure that these programs and processes are delivering the desired outcomes. Mr. Shepherd must advise the NRC upon completion of these items, which shall be no later than one year from the date of this Order.
6. Mr. Shepherd shall take a Radiation Safety Officer course with emphasis on the regulatory interface within one year of the date of the Order in order to enhance his understanding of the importance of completeness and accuracy of information regarding activities subject to NRC and DOT regulation. Mr. Shepherd must advise the NRC upon completion of this item, which shall be no later than one year from the date of the Order.

7. Should Mr. Shepherd leave Foss Therapy Services and seek other employment involving NRC-regulated activities within five years from the date of this Order, Mr. Shepherd shall provide that employer a copy of this Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Joseph S. Shepherd of good cause.

VI

In accordance with 10 CFR 2.202, Joseph S. Shepherd must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Joseph S. Shepherd, 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 Joseph S. Shepherd 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 Joseph S. Shepherd if the answer is by a person other than Joseph S. Shepherd.

If a person other than Joseph S. Shepherd 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 Joseph S. Shepherd 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), Joseph S. Shepherd, 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/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 8th day of September, 2008