



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

June 1, 2017

IA-16-049

Mr. Toby Lashley
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

Dear Mr. Lashley:

The enclosed Order is being issued because the U.S. Nuclear Regulatory Commission (NRC) has determined that you, as a former radiographer employed by JANX Integrity Group (JANX) engaged in deliberate misconduct while conducting radiographic operations. Specifically, while employed by JANX, you deliberately failed to comply with NRC regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 34.41(a) when you failed to accompany another radiographer during radiographic operations. Instead, you sat in the truck facing away from the radiographic operations and, therefore, you were unable to observe the operations and provide immediate assistance to prevent unauthorized entry. Your actions violated the NRC's deliberate misconduct rule, 10 CFR 30.10(a)(1), which prohibits employees from engaging in deliberate misconduct that causes a licensee to be in violation of any NRC requirement, because your actions were deliberate and caused JANX to be in violation of 10 CFR 34.41(a). A copy of the enforcement action issued to JANX is enclosed.

Because of your action described above, the NRC lacks the requisite reasonable assurance that you are willing to comply with NRC requirements and has determined that you should be prohibited from engaging in licensed activities. Consequently, for a period of one year from the effective date of the enclosed Order (as defined in Section V of the Order), you will be prohibited from engaging in NRC-licensed activities that are conducted pursuant to a specific or general license issued by the NRC. During this one-year prohibition you cannot perform, supervise, assist, or otherwise engage in: (1) industrial radiographic operations for an NRC licensee; (2) industrial radiographic operations for an Agreement State licensee that are conducted under an NRC general license granted pursuant to 10 CFR 150.20; or (3) any other licensed activity in NRC jurisdiction.

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 civil monetary penalty.

In accordance with 10 CFR 2.202, you are required to respond to the enclosed Order within 30 days of issuance and should follow the instructions specified in the enclosed Order when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Order. The NRC will use your response, in part, to evaluate the appropriateness of the enforcement action as well as whether further

enforcement action is necessary to ensure compliance with regulatory requirements. To the extent possible, your response should not include any personal, privacy, proprietary or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Instead of providing a response to the Order, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. This request must also be made within 30 days of issuance of the Order. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the brochure NUREG/BR-0317, Revision 1, and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate NRC's program as an intake neutral. **Please contact the Institute on Conflict Resolution at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through the ADR program. In addition, if you choose this option, also please contact Richard Skokowski at (630) 810-4373 within 10 days of the date of this letter.**

In accordance with 10 CFR 2.390, a copy of this letter and its enclosures will be made available electronically for Public inspection in the NRC Public Document Room and from the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Because this letter references and encloses information related to enforcement action against an individual, this letter and its enclosures will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC's Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Questions concerning this Order should be addressed to Richard Skokowski, who can be reached at (630) 810-4373.

Sincerely,

/RA/

Patricia K. Holahan
Director, Office of Enforcement

Enclosures:

1. Order Prohibiting Involvement in
NRC-Licensed Activities
2. Letter to JANX Integrity Group
Notice of Violation

cc w/encls:
State of Michigan

Letter to Toby Lashley from Patricia Holahan dated: 6/1/2017

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITES

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NAME	MLemoncelli ¹	RSkokowski	CPederson	PHolahan
DATE	05/16/17	05/19/17	05/19/17	6/1/2017

OFFICIAL RECORD COPY

¹ OGC Concurrence provided by email from David Cylkowski dated May 16, 2017.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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IA-16-049

Toby Lashley

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ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

Mr. Toby Lashley was employed as a radiographer at JANX Integrity Group (JANX) located in Parma, Michigan. JANX Integrity Group holds License No. 21-16560-01, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 34 on May 12, 2016. The license authorizes radiographic operations in accordance with the conditions specified in the license.

II

On January 19, 2016, during a routine inspection at JANX, the radiation safety officer (RSO) informed the inspector that two individuals, Mr. Toby Lashley and another radiographer, were terminated in September 2015 for not following NRC regulations. As a result, the NRC Office of Investigations (OI) initiated an investigation to determine if JANX employees deliberately failed to follow NRC regulations. The OI investigation focused, in part, on whether Mr. Lashley deliberately failed to be present during radiographic operations performed away from a permanent radiographic installation, which require two qualified individuals to be present. The NRC completed its investigation on June 1, 2016.

The Region III OI interviewed a number of individuals, including a regional compliance manager, the RSO, Mr. Lashley, and two additional radiographers who had worked with Mr. Lashley. One of the radiographers who had worked with Mr. Lashley testified that Mr. Lashley would remain in the truck developing and reading the film while he performed most of the work. The radiographer raised the issue to JANX management. On August 12, 2015, during an audit, the regional compliance manager verbally reminded Mr. Lashley of the requirement for both qualified individuals to be present during radiographic operations. However, on August 13, 2015, the manager observed Mr. Lashley violate the requirement despite the verbal reminder the previous day.

During the above, the RSO stated that he had observed Mr. Lashley and another radiographer perform radiographic operations on September 18, 2015. According to the RSO, when the radiographic operations began, Mr. Lashley sat in the truck facing forward, using his phone and working on his computer, while the other radiographer worked at the rear of the truck.

During the OI interview, Mr. Lashley did not recall receiving any training from JANX; however, he acknowledged his experience in performing radiographic operations and was able to describe the equipment, its function, and methods in performing radiography. Mr. Lashley recalled the August 2015 events and not having both qualified individuals present during radiographic operations. He also recalled the September 18, 2015, confrontation with the RSO; however, he did not admit to violating the requirement.

Based on the evidence gathered during the OI investigation, on September 18, 2015, Mr. Lashley deliberately failed to accompany the radiographer during radiographic operations as required by 10 CFR 34.41(a).

III

Based on the above, the NRC has concluded that Mr. Toby Lashley engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused JANX to be in violation of 10 CFR 34.41(a). The NRC must be able to rely on JANX and its employees to comply with NRC requirements. Mr. Lashley's actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, the NRC lacks the requisite reasonable assurance that licensed activities could be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Lashley were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Lashley be prohibited from any involvement in NRC-licensed activities for a period of 1 year from the date of this Order. Additionally, Mr. Lashley is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1 year following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

1. Mr. Toby Lashley is prohibited for 1 year from the date of this Order from engaging in, supervising, directing, or in any other way conducting 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 in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Toby Lashley is currently engaged in NRC-licensed activities with any licensee, he must immediately cease those activities; inform the NRC of the name, address, and telephone number of the licensee; and provide a copy of this Order to the licensee.
3. For a period of 1 year after the 1-year period of prohibition has expired, Mr. Toby Lashley shall, within 20 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 above, 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 the NRC-licensed activities. In the notification, Mr. Lashley shall include a statement of his commitment to compliance with regulatory requirements and the basis 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, withdraw, or rescind any of the above conditions upon demonstration by Mr. Toby Lashley of good cause.

V

In accordance with 10 CFR 2.202, Mr. Toby Lashley must submit a written answer to this Order under oath or affirmation within 30 days of its publication in the *Federal Register*. Mr. Lashley's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its publication in the *Federal Register*. In addition, Mr. Lashley or any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the *Federal Register*. 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 and petition for leave to intervene (petition), 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 that request to participate under 10 CFR 2.315(c), must be filed

in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>. 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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (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 the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's Public Web site at

<http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's 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 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's 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, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have 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 stating why there is good cause for not filing electronically and 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, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents 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. 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 that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the Public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "Cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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 submission.

If a person other than Mr. Toby Lashley 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 2.309(d) and (f).

If a hearing is requested by Mr. Toby Lashley or other 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 date this Order is published in the Federal Register 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 1st day of June 2017.

For the Nuclear Regulatory Commission.

/RA/

Patricia K. Holahan, Director
Office of Enforcement