

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Daniel J. McCool

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IA 94-017

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

I

Daniel J. McCool has been employed as a radiographer in the field of industrial radiography since approximately 1968. On approximately January 1, 1987, Mr. McCool initiated licensed activities at the American Inspection Company, Inc., (AMSPEC), in his capacity as President. AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. McCool was President of AMSPEC at the time of license suspension.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. McCool, in his capacity as President of AMSPEC, conspired with other AMSPEC officials to deceive the Commission

regarding training of employees and, in addition, deliberately provided false sworn testimony to NRC officials.

AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual refers to employee training to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. In addition, 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or limitation of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

From 1990 through April 1992, Mr. McCool deliberately violated License Condition 17 by failing to train new Radiation Protection Officers (RPOs), and by allowing others to administer the RPO qualification process, including exams and certification, although this was contrary to the Radiation Safety Program established in the Radiation Safety Manual. For over two years, from late fall 1989 through April 1992, Mr. McCool failed to perform the radiation safety audit function required by the Radiation Safety Program. In addition to the above, Mr. McCool deliberately provided false information under oath to

an investigator and an inspector on May 4, 1992, regarding training of an individual in order to qualify that individual for work as an RPO.

On September 22, 1993, Mr. McCool pled guilty to two felony violations of the Atomic Energy Act based on his violations of these requirements. The violations to which Mr. McCool pled were: (1) conspiracy to violate the Atomic Energy Act, and (2) providing false information to the NRC.

III

Based on the above, Mr. McCool engaged in deliberate misconduct which caused the licensee to be in violation of the training requirements of License Condition 17 and 10 CFR 30.9. The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. McCool's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate false statements to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, including the requirement to provide complete and accurate information to the NRC. Mr. McCool's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements

and that the health and safety of the public will be protected if Mr. McCool were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. McCool be prohibited from engaging in NRC-licensed activities (including any supervising, training or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for a period of five years commencing after completion of the five year period of prohibition, Mr. McCool is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. McCool's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

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, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Daniel J. McCool 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. During this time period, Mr. McCool must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Daniel J. McCool shall, within 20 days of his acceptance of each 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, D.C. 20555, 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 first notification Mr. McCool 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, may in writing, relax or rescind any of the above conditions upon demonstration by Mr. McCool of good cause.

V

In accordance with 10 CFR 2.202, Daniel J. McCool must, and any other 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 the date of this Order.

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 Daniel J. McCool or any other person 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, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Daniel J. McCool if the answer or hearing request is by a person other than Daniel J. McCool. If a person other than Daniel J. McCool 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 2.714(d).

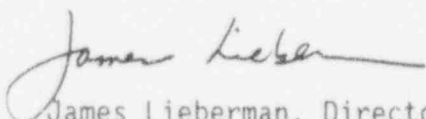
If a hearing is requested by Daniel J. McCool or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Daniel J. McCool 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.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.

Daniel J. McCool

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