**FORM 35-II: Order Prohibiting Involvement in NRC-Licensed Activities (Non-Immediately Effective) (Individual Employed by Materials Licensee)**

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of )

) IA-[YY]-[XXX]

[Individual’s Name] )

)

ORDER PROHIBITING INVOLVEMENT IN

NRC-LICENSED ACTIVITIES

**{*Double space from here to end, except single space in signature block.*}**

I

{*Set forth the name of the person to whom the order is to be issued, and his or her relationship to the licensee and to the licensed activities.*} [Individual’s Name] is employed as a [Job Position] at [Licensee’s Name] (Licensee) in [City], [State]. The Licensee is the holder of [Type of license] {*e.g.,* “Byproduct,” “Source Material” or “Special Nuclear Material”} License No. [License Number] issued on [Date] by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part [Part Number] of *Title 10 of the Code of Federal* Regulations (10 CFR). The license authorizes {*State what the license authorizes, e.g.,* “possession and use of [Amount] curies of [Type of Material] in the manufacture, installation, servicing and operation of [Type of Device] devices. The license further authorizes in accordance with the conditions specified therein.”} {*As applicable:* [Individual’s Name] is listed on the license as [Job Title on License].}

II

{*This section should provide a description of relevant events, facts, violations, technical or legal reasons that provide the substantive basis for issuing the Order, e.g.:*

On [Date], an inspection (investigation) of licensed activities was conducted at Licensee's facility at [Location] in response to allegations received in NRC Region on [Date] regarding {*Provide information regarding the allegation*.} As a result of the inspection (investigation), apparent violations of regulatory requirements were identified. These violations include {*Describe the violations that were identified*.} During the inspection (investigation), the Licensee's employees informed NRC inspectors (investigators) that {*Describe the information that the employees provided to NRC*.} Mr. A stated . Mr. B denied . Mr. C admitted . Contrary to the statements of Mr. A and Mr. B, it was determined that .}

On [Date], the NRC conducted an inspection (and/or investigation) of {Insert specific reason for inspection/investigation and/or licensed activities observed. Include relevant supporting facts based upon OI findings during the investigation. This should include the overall issue and the declarations (admission/denial) from the individual related to the allegation(s).}

By letter dated [Date] ([ADAMS accession number]), the NRC informed [Individual’s Name] that the NRC was considering escalated enforcement action for apparent violations of NRC’s deliberate misconduct rule, 10 CFR [Applicable part]. The [Date] letter identified apparent violations of the deliberate misconduct rule; specifically apparent violations of 10 CFR [Applicable part/subpart] were identified. The 10 CFR [Applicable part] apparent violation was related to [Individual’s Name] actions which resulted in [Licensee] being in violation of 10 CFR [Applicable part] associated with {*Insert details related to how the regulation was violated.*} The NRC’s [Date] letter provided [Individual’s Name] the opportunity to request [*Insert all that apply*, “a Predecisional enforcement conference (PEC), provide a written response, or request alternative dispute resolution (ADR)”} with the NRC in an attempt to resolve issues associated with these apparent violations. During a {*Insert date and method of communication e.g.* “conference call,” “letter,” etc.} between [Individual’s Name] and NRC staff, [Individual’s Name] indicated that he would like to participate in [Insert requested resolution method]. A [Insert method] was conducted on [Insert date].

During the {Insert method used, e.g., “PEC,” “conference call”}, [Individual’s Name] indicated that [Insert declarations made by the individual during the conference/ADR session, if applicable. This section should also include facts discussed during the session, including those conflicting to the information gathered during the investigation and/or inspection].

Based on the results of the inspection and the OI investigation, and information provided during the {Insert method used, e.g., “PEC,” “conference call”}, the NRC concluded that [Individual’s Name] engaged in deliberate misconduct in violation of 10 CFR [Applicable part].

III

{*This section should provide the justification for issuing the Order, in light of the facts described in Section II, e.g.,* “Based on the above, it appears that [Individual’s Name], an employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR [Section] and 30.10. It further appears that [Individual’s Name] has deliberately provided to NRC inspectors (investigators) information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10.”} {*This section should also describe how the action of the named individual adversely affects public health and safety, e.g.,* “The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. [Individual’s Name] action in causing Licensee to violate 10 CFR [Section] and 10 CFR 30.10 and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.”}

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 [Individual’s Name] were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that [Individual’s Name] be prohibited from any involvement in NRC-licensed activities for a period of [Number] years from the date of this Order. Additionally, [Individual’s Name] is required to notify the NRC of his (her) first employment in NRC-licensed activities for a period of [Number] years following the prohibition period.

IV

Accordingly, pursuant to sections 81, {*Include 104b if any of the licenses subject to the order were issued under Section 104b*}, 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, and 10 CFR 30.10. IT IS HEREBY ORDERED THAT:

1. [Individual’s Name] is prohibited for [Number] years 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. **{Note to staff: Since “licensed activities” include everything within the NRC’s jurisdiction, the staff should evaluate on a case-by-case basis what the NRC is concerned about with respect to an individual’s activities.  Some cases might necessitate a broad ban from all NRC-licensed activities, while others might be more tailored. If it is not the intent to prohibit an individual from the full sweep of licensed activities, the order should be tailored to meet that intent.}**

2. If [Individual’s Name] is currently involved with another licensee in NRC-licensed activities, he (she) 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.

1. For a period of [Number] years after the [Time] year period of prohibition has expired, [Individual’s Name] shall, within 20 days of acceptance of his (her) first employment offer involving NRC-licensed activities or his (her) 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 (she) is, or will be, involved in the NRC-licensed activities. In the notification, [Individual’s Name] shall include a statement of his (her) commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he (she) will now comply with applicable NRC requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by [Individual’s Name] of good cause.

V

In accordance with 10 CFR 2.202, [Individual] must submit a written answer to this Order under oath or affirmation within 20 days of its publication in the Federal Register. [Individual]‘s failure to respond to this Order could result in additional enforcement action in accordance with the Commission’s Enforcement Policy.  In addition, [Individual] and any other person adversely affected by this Order may request a hearing on this Order within 20 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

***Verify E-Filing Requirements at****:*

<https://adamsxt.nrc.gov/idmws/ViewDocByAccession.asp?AccessionNumber=ML120410550>

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<https://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 <https://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 <https://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 <https://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 a 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.

***End of E-Filing Language***

If a person other than [Insert Individual’s name] 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 [Insert Individual’s name] or a 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 20 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.

***{Ensure that there are at least 3 lines of text on the signature page}***

FOR THE NUCLEAR REGULATORY COMMISSION

[Name]

Deputy Executive Director

for

Dated this \_\_\_\_ day of [Month] [Year]