

accomplished safely. To this end, NRC coordinates review and assessment of the licensee with the State of South Carolina, Department of Health and Environmental Control. To avoid duplicative effort, NRC has identified several areas in which it relies primarily on the State regulatory program. Areas distinct to SNM regulation are directly evaluated by NRC. Under the NRC license, several State-identified license conditions are referenced; this ensures that NRC is aware of significant licensee activities requiring State regulatory action. Additionally, NRC incorporates conditions in the SNM license which provide NRC the latitude to enforce the Agreement State license conditions, that is, if NRC determines that such action is necessary. Finally, the NRC license does not abrogate or diminish the authority of the State of South Carolina governed by its Agreement under section 274b of the Atomic Energy Act of 1954, as amended, with NRC, to regulate, inspect or otherwise exercise control of operations, with respect to source and byproduct material, for disposal of that material at the LLW disposal facility at Barnwell, South Carolina.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Chem-Nuclear Systems, Inc., 140 Stoneridge Drive, Columbia, South Carolina 29210, Attention Mr William B. House, and;

2. The NRC staff, by delivery to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001. Attention: Docketing and Services Branch; or hand-deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:45 a.m. and 4:15 p.m., Federal workdays.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 16th day of July 1996.

For the Nuclear Regulatory Commission.
Michael F. Weber,
Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

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[IA 96-042]

Order Prohibiting Involvement in NRC-Licensed Activities

In the Matter of Mark A. Jenson (Home Address Deleted Under 10 CFR 2.2790).

I

Mark A. Jenson was employed as President of NDT Services, Inc. in Caguas, Puerto Rico, in 1993. NDT Services, Inc. (NDTS or Licensee) holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Jenson was identified in a letter from the Licensee to NRC, dated September 4, 1993, and in other licensing and inspection correspondence, as the President, NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in

Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations, which resulted in the evacuation of the Sun Oil Company refinery in Yabucoa, Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, the NDTS, with the knowledge and approval of the former Radiation Safety Officer (RSO) and former President, deliberately utilized radiographers untrained in NDTS operating and emergency procedures. During an August 31, 1995 interview with OI, Mr. Jenson stated that he was aware that even a highly qualified radiographer from another company must receive additional training before operating under NDTS' program. Mr. Jenson further stated that, prior to the September 4, 1993 incident, NDTS' former RSO told Mr. Jenson that the radiographers needed additional training prior to performing radiography. Nonetheless, Mr. Jenson allowed the radiographers to conduct licensed activities without the required training. In addition, Mr. Jenson stated that, following the September 4, 1993 incident, he requested both radiographers to sign a document certifying that the radiographers had been trained by NDTS, when in fact, they had not been. The radiographers refused to sign the document. Furthermore, during a May 19, 1995 transcribed interview with OI, one of the radiographers corroborated Mr. Jenson's admission (i.e., that Mr. Jenson asked the radiographer to sign a document indicating that the radiographer had been trained).

By letter dated February 20, 1996, Mr. Jenson was informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. Although the NRC has confirmation that Mr. Jenson received the letter (i.e., returned certified mail

¹ The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State Licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS License.

receipt as well as a telephone acknowledgement by his spouse to the NRC on February 29, 1996), Mr. Jensen never responded to the letter and, therefore, no conference has been conducted with him. However, on May 17, 1996, a teleconference was conducted with Mr. Jensen to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTs, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Jensen deliberately permitted unqualified radiographers to perform radiography for NDTs on September 4, 1993, in that he knew the radiographers had not been trained in NDTs procedures or equipment; and (2) Mr. Jensen attempted to generate a false, NRC-required training record for the contract radiographers involved in the source disconnect event when, subsequent to September 4, 1993, he requested both individuals to sign a document indicating that the individual had been trained in the NDTs radiation safety manual and procedure, when in fact, the contract radiographer had not been trained.

III

Based on the above, the staff concludes that Mr. Jensen engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by failing to utilize trained and qualified individuals for the conduct of radiographic operations at the Sun Oil Company refinery on September 4, 1993. Mr. Jensen's attempt to generate a falsified training record for the radiographer also demonstrates a lack of integrity which cannot be tolerated. As the former President of NDTs, Mr. Jensen was responsible for ensuring that NDTs conducted activities in accordance with NRC requirements. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to maintain complete and accurate information required by the NRC. Mr. Jensen's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a) is a violation of 10 CFR 30.10 and has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

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. Jensen were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Jensen be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such 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. Additionally, Mr. Jensen is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year 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:*

A. For a period of five years from the effective date of this Order, Mark A. Jensen is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities which 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. This prohibition includes, but is not limited to: (1) Using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

B. At least five days prior to the first time that Mark A. Jensen engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition period outlined in Section IV.A above, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mark A. Jensen understands NRC requirements, that he is committed to compliance with NRC requirements,

and that provides a basis as to 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. Jensen of good cause.

V

In accordance with 10 CFR 2.202, Mark A. Jensen 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. 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, Washington, D.C. 20555, and include a statement of good cause for the extension. 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 Mr. Jensen or 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 Hearing and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Mark A. Jensen, if the answer or hearing request is by a person other than Mark A. Jensen. If a person other than Mark A. Jensen 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 Mark A. Jensen, 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 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 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.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of July 1996.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

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[IA 96-043]

Order Prohibiting Involvement in NRC-Licensed Activities

In the Matter of Jesus N. Osorio (Home Address Deleted Under 10 CFR 2.790).

I

Jesus N. Osorio was employed as the Radiation Safety Officer (RSO) of NDT Services, Inc. (NDTS or Licensee) in Caguas, Puerto Rico, in 1993. NDTS holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30, on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Osorio was identified in consecutive amendments to NRC License No. 52-19438-01, dated January 12, 1992 and October 26, 1993, and in other licensing correspondence, as the RSO for NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations, which resulted in the evacuation of the Sun Oil

Company refinery located in Yabucoa, Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that: (1) NDTS, with the knowledge and approval of the former RSO and former President, deliberately utilized radiographers untrained in NDTS operating and emergency procedures; and (2) NDTS, through the actions of the former RSO, provided the NRC with documentation that falsely certified the radiographers' training.

During an August 31, 1995 interview with OI, Mr. Osorio stated that he was aware that the radiographers needed training and that they were required to pass a proficiency test prior to working at the Sun Oil Company refinery. Mr. Osorio added that, prior to hiring the radiographers, he informed NDTS' former President that the radiographers would have to be trained and tested on NDTS equipment. Nonetheless, Mr. Osorio did not train the radiographers because they left for their accommodations and he was tired and went home, although he knew that they would work their shift without the required training. As to the false training documentation, Mr. Osorio stated that he knew he signed false documentation and that such falsification constituted a violation of NRC regulations, but he signed the documentation because he "needed to have something."

Based on the OI conclusions, the NRC further concluded that during the December 16-17, 1993 inspection, the former RSO orally represented to an NRC inspector that he demonstrated the safe use of the NDTS radiography equipment prior to allowing two contract radiographers to operate the equipment on September 3, 1993, when he knew that he had not conducted such a demonstration.

On February 15, 1996, Mr. Osorio was contacted by telephone and initially informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. During this telephone conversation, Mr. Osorio declined to attend this conference. By letter dated February 20, 1996, Mr. Osorio was transmitted the Inspection Report and the synopsis of the OI investigation and again offered the opportunity to attend a conference. To date, Mr. Osorio has not responded to the February 20, 1996 letter. No conference has been conducted with him; however, on May 16, 1996, a

teleconference was conducted with Mr. Osorio to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTS, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Osorio deliberately permitted unqualified radiographers to perform radiography for NDTS on September 4, 1993, in that he knew the radiographers had not been trained in NDTS procedures or equipment; (2) on December 16, 1993, Mr. Osorio provided an NRC inspector with written certification of the qualifications of the two contract radiographers, dated September 3, 1993, which falsely indicated that the radiographers had been qualified based on records obtained from their principal employer and by the experience demonstrated by the contract radiographers to him; and (3) on December 16, 1993, Mr. Osorio provided false oral statements to an NRC inspector indicating that he had demonstrated the safe use of the NDTS radiography equipment to the radiographers on September 3, 1993, when, in fact, he had not conducted such a demonstration.

III

Based on the above, the staff concludes that Mr. Osorio engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by deliberately failing to utilize trained and qualified individuals during the conduct of radiographic operations at the Sun Oil Company refinery on September 4, 1993. Mr. Osorio also violated 10 CFR 30.10(a)(2), and caused the Licensee to be in violation of 10 CFR 30.9, by deliberately providing materially inaccurate and incomplete information to the NRC. As the former RSO of NDTS, Mr. Osorio was responsible to assure that NDTS conducted activities in accordance with NRC requirements and the NDTS radiation safety program. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to provide complete and accurate information to the NRC. Mr. Osorio's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a), and his deliberate submission to the NRC materially inaccurate and incomplete

¹ The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.