

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to A. H. Stephens, General Counsel, Florida Power Corporation, MAC-A5D, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 24th day of February 1997.

For the Nuclear Regulatory Commission.
L. Raghavan,
*Project Manager, Project Directorate II-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*
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[IA 97-011]

In the Matter of Krishna Kumar; Order Prohibiting Involvement in NRC-Licensed Activities; (Effective Immediately)

I

Krishna Kumar (Mr. Kumar) was President of Power Inspection, Inc. (PI or Licensee). PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing. Such services were provided to the Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During the inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the Radiation Safety Officer (RSO) named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

Furthermore, the NRC found during the December 1993 inspection that the utilization logs for the iridium-192 source, covering the period of July through November 1993, as well as the utilization logs for the cobalt-60 source, covering the period of July through October 1993, were also unavailable for inspection at the time of the NRC inspection on December 2, 1993.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

a. With respect to the vendor-related activities: (1) False Eddy Current Testing (ET) qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and false ET qualification certification examination results and Personnel Certification Summaries were deliberately generated for four employees, and these falsifications were condoned or directed by the former President (i.e., Mr. Kumar), the former Vice President/RSO, and the former Quality Assurance Manager; and (2) three PI employees tested positive for illegal drug use prior to working at Perry and Cooper in 1993, and the former President of PI was aware of this and did not notify Perry and Cooper.

b. With respect to the materials License: (1) A minimum of 38 source utilization logs (for radiography performed) were falsely created by PI employees to satisfy questions asked during an April 1993 NRC inspection regarding the lack of utilization logs, and this activity was undertaken at the direction of the former President of PI; (2) the former President of PI knowingly failed to notify the NRC of a change of radiation safety officer in approximately August 1993; and (3) responses in PI's letter, dated July 14, 1993, to the NRC, were deliberately incomplete and inaccurate, and the former President and individual identified on PI's NRC license as the RSO were responsible for knowingly providing this false information to the NRC.

The inaccurate information provided to the NRC in the letter dated July 14, 1993, was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an inspection conducted in April 1993. One of the violations identified during the April 1993 inspection involved the failure to maintain personnel monitoring records for the radiographers at the facility. In the July response, signed by the former RSO (i.e., the

individual identified on PI's NRC license as the RSO), the Licensee stated that records of such personnel monitoring had been misplaced at the time of the April inspection. In fact, the NRC learned, during the December 2 and 3, 1993 inspection, that Mr. Kumar knew that those records alluded to in the licensee's July 1993 response did not even exist at the time of the April inspection, since the film badges had not been processed until after the April inspection was completed.

III

Based on the above, Mr. Kumar, former President of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate. Mr. Kumar also violated 10 CFR 30.10(a)(2) by submitting on March 5, 1993, and on October 6, 1993, to each NPPD and CEIC, respectively, three inaccurate letters stating that the trustworthiness and reliability of two individuals had been established by an investigation, when Mr. Kumar knew that the individuals had used illegal substances.

In addition, Mr. Kumar, an employee of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a) and 10 CFR 34.27. Specifically:

a. As a result of Mr. Kumar's direction to fabricate source utilization logs, PI violated 10 CFR 30.9(a) and 10 CFR 34.27 by maintaining a minimum of 38 inaccurate logs for radiography performed by PI; and

b. As a result of Mr. Kumar's direction, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Kumar's actions in deliberately violating NRC requirements and in causing the Licensee to be in violation of NRC requirements 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 both the NRC and NRC licensees. Moreover, given Mr. Kumar's indictment on April 28, 1988,¹ there is a pattern of record falsification which raises further doubt about Mr. Kumar's integrity and whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Kumar, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Kumar were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Kumar were involved in NRC-licensed activities. In addition, I find that Mr. Kumar is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Kumar be prohibited from involvement in NRC-licensed activities for ten years from the date of this Order, and if he is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. In addition, for a period of five years commencing after the ten-year period of prohibition, Mr. Kumar must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Kumar'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 misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 57, 62, 81, 103, 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, 30.10, 50.5,

¹ Mr. Kumar and PI were indicted by the United States Attorney in the Western District of Pennsylvania for fraud and false statements in connection with testing that was to be performed at the Duquesne Light Company, a licensee of the NRC. In this case, Mr. Kumar admitted that he directed falsification of eddy current test equipment calibration certifications to save PI time and money, and subsequently provided the false certificates to Duquesne Light Company.

and 150.20, *It is hereby ordered, effective immediately, that:*

A. Mr. Krishna Kumar is prohibited for ten years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Kumar is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.

B. For a period of five years, after the above ten-year period of prohibition has expired, Mr. Kumar 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.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 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 such notification, Mr. Kumar shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Kumar of good cause.

V

In accordance with 10 CFR 2.202, Mr. Kumar 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. Kumar 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Kumar if the answer or hearing request is by a person other than Mr. Kumar. If a person other than Mr. Kumar 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 Mr. Kumar or a 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.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Kumar 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, 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. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 18th day of February 1997.

For the Nuclear Regulatory Commission.
Edward L. Jordan,
Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.
[FR Doc. 97-4999 Filed 2-27-97; 8:45 am]
BILLING CODE 7590-01-P

[IA-97-012]

In the Matter of James L. Mulkey; Order Prohibiting Involvement in NRC- Licensed Activities; (Effective Immediately)

I

James L. Mulkey (Mr. Mulkey) was employed as Vice President by Power Inspection, Inc. (PI or Licensee), and was identified on PI's NRC license as the Radiation Safety Officer (RSO) for PI. PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to licensees of nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing (ET). Such services were provided to the licensees of Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During that inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the RSO named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to

promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

a. With respect to the materials license, responses in PI's response letter dated July 14, 1993, to the NRC were deliberately incomplete and inaccurate, and the President and former RSO were responsible for providing this false information to the NRC. Specifically, the inaccurate information provided to the NRC was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an NRC inspection conducted in April 1993.

In a response, signed by Mr. Mulkey, to the violations listed in the June 16, 1993 Notice of Violation, the licensee stated that: (1) observations of the licensee's radiographers had been made when, in fact, the observations had not been made; (2) a ratemeter had been sent for calibration, when, in fact, the ratemeter had not been sent; (3) pocket dosimeters had been calibrated, when, in fact, the dosimeters had not been calibrated; (4) source utilization logs had been maintained, when, in fact, the logs had not been maintained; (5) personnel monitoring reports were available, when, in fact, the reports had not been available.

b. With respect to the vendor-related activities, false ET qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and ET qualification certification examination results and Personnel Certification Summaries were generated for four employees, and these falsifications were condoned or directed by the former President, former Vice President/RSO (i.e., Mr. Mulkey), and the former Quality Assurance Manager.

In addition, Mr. Mulkey deliberately provided false information to the NRC during a December 2, 1993 telephone discussion with a representative of the NRC in that Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO. These statements were false in that: (1) Interviews with PI employees established that Mr. Mulkey had not visited the Wexford office during 1993, and they were not aware of Mr. Mulkey performing any audits related to radiographic operations out of the Wexford office; and (2) Mr. Mulkey