



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

June 26, 2003

IA-03-002

Mr. Lowell S. Trujillo
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

**SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC INSPECTION REPORT 999-90004/02-04 AND OFFICE OF
INVESTIGATIONS REPORT NO. 4-2002-045)**

Dear Mr. Trujillo:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Order) is being issued to you based on an investigation by the U. S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The Code of Federal Regulations (CFR), specifically, 10 CFR 30.3, prohibits anyone from transferring, receiving, acquiring, owning, or possessing byproduct material except as authorized in a specific or general license issued by the NRC or an Agreement State. Based on the information obtained during the OI investigation, we determined that you deliberately purchased, possessed and used two Troxler Model 3411 gauging devices, each containing about 10 millicuries (mCi) of cesium-137 and about 50 mCi of americium-241, in violation of NRC requirements. As indicated in the Order, the NRC lacks reasonable assurance that licensed activities would be conducted in compliance with the NRC's requirements and that the health and safety of the public would be protected if you were permitted to be involved in NRC-licensed activities at this time. Therefore, the enclosed Order prohibits you from participating in NRC-licensed activities for a period of three years from the date of this Order.

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.

Questions concerning this Order should be addressed to Mr. Frank Congel, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC

Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Carl J. Paperiello
Deputy Executive Director
for Materials, Research and State Programs

Docket No. 999-90004

Enclosure: As Stated

cc w/Enclosure
Idaho Radiation Control Program Director

Mr. Paul DesFosses
Structural Testing and Inspection
53 North Arthur, No. 7
Pocatello, Idaho 83204

ENCLOSURE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Mr. Lowell S. Trujillo

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IA-03-002

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

I

Mr. Lowell S. Trujillo is not a holder of any Byproduct, Source, or Special Nuclear Material License issued by the Nuclear Regulatory Commission (NRC or Commission).

II

In July 2002, Mr. Lowell S. Trujillo and two other individuals started a business venture in the State of Idaho under the name of Structural Testing and Inspection (STI). In September 2002, the NRC was contacted by a Deputy Sheriff from Custer County, Idaho, to discuss the Deputy Sheriff's having temporarily impounded, and later released, a portable gauge containing NRC-licensed material that was in the possession of STI. The Deputy Sheriff indicated that he had released the gauge when he was shown a bill of sale and an NRC license. In late September 2002, the NRC conducted an inspection to determine the circumstances surrounding this incident and discovered that STI, which did not hold an NRC license, had purchased and used two portable gauges containing NRC-licensed material. NRC regulations (i.e., 10 CFR 30.3) state, in part, that no person shall receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR Part 30. Based on these circumstances, including the fact that Mr. Trujillo had used without authorization, a former employer's NRC license, to purchase and use the gauges, the

NRC's Office of Investigations (OI) launched an investigation to determine if willful violations of NRC requirements had occurred.

NRC's inspection and investigation of this matter determined the following. On August 28, 2002, Mr. Trujillo purchased and took possession of a Troxler Model 3411 portable moisture-density gauge from Qal-Tek Associates (QTA) for STI's use. Troxler Model 3411 gauges contain byproduct material, including about 10 millicuries of Cesium-137 and about 50 millicuries of Americium-241. At the time, the QTA employee who sold the gauge to Mr. Trujillo was aware that Mr. Trujillo was employed by All Tech Corporation (ATC), an NRC licensee, and believed that the purchase was being made under the authority of ATC's license. Mr. Trujillo advised the QTA employee that the gauge was going to be sold to STI. Approximately one week later, Mr. Trujillo contacted QTA and purchased a second Troxler Model 3411 gauge, again for STI's use. At the time that STI purchased and took possession of these gauges, STI did not have an NRC license, and had not made application to the NRC for a license.

On September 12, 2002, when the Custer County, Idaho, Deputy Sheriff confiscated and impounded one of STI's Troxler gauges during a search for stolen construction equipment, Mr. Trujillo faxed to the Sheriff's office a copy of a bill of sale for the gauge along with a copy of an NRC license held by Reliance Testing and Inspection (RTI). The license, which the NRC later determined was not a current version of RTI's license, listed Mr. Trujillo as the Radiation Safety Officer (RSO) for RTI, and the bill of sale showed the gauge had been purchased by STI. Based on that information, the Deputy Sheriff released the gauge to STI but contacted the NRC to discuss the incident. One day after this incident, Mr. Trujillo contacted the NRC and was told that he was no longer listed as the RSO on RTI's license (Note: Mr. Trujillo also had

contacted the NRC in May 2002 and July 2002 regarding whether he was still listed as the RSO on RTI's license).

On September 26, an NRC inspector and the Deputy Sheriff confronted an STI employee at a temporary job site and asked the employee to produce the NRC license under which he was authorized to possess and use a portable gauge that he had with him. The STI employee produced a copy of RTI's (outdated) license which listed Mr. Trujillo as the RSO. The Deputy Sheriff confiscated the gauge. The inspector and Deputy Sheriff contacted Mr. Trujillo about the second gauge in STI's possession, and Mr. Trujillo voluntarily surrendered the second gauge to the Deputy Sheriff. Within a day of this incident, Mr. Trujillo faxed an application for an NRC license for STI to possess and use the gauges. Subsequently, STI has withdrawn its license application.

NRC contacts with ATC and RTI determined that neither company had authorized STI or Mr. Trujillo to use their NRC licenses to purchase or use gauges containing NRC-licensed material. The NRC also determined that Mr. Trujillo is knowledgeable and experienced with respect to NRC's regulation of portable density gauges. He has conducted licensed activities with portable gauging devices for approximately ten years. During that time, he has worked as an assistant RSO and an RSO for different NRC licensees.

On March 10, 2003, the NRC issued letters to STI and Mr. Trujillo describing apparent violations of NRC requirements and, in Mr. Trujillo's case, describing the NRC's concern that he engaged in deliberate misconduct by purchasing and using the gauges without a license. Separate predecisional enforcement conferences were conducted with STI and Mr. Trujillo on

March 26, 2003. During his conference, Mr. Trujillo maintained that he thought he was authorized to purchase and use gauges for STI because his name was listed as RSO on RTI's license, even though he had been terminated from RTI's employment in March 2001. He maintained that he did not deliberately violate NRC requirements.

Based on its evaluation of all of the facts and circumstances in this matter, the NRC has concluded that Mr. Trujillo's explanation and assertions are not credible and that he deliberately violated NRC requirements in 10 CFR 30.3 when he purchased and used these gauges without an NRC license. The NRC bases its conclusion, in part, on the following reasons. Mr. Trujillo has approximately ten years of experience in licensed activities including acting as assistant RSO for one licensee and RSO for another licensee. His experience includes submitting an application for an NRC license, and he is familiar with NRC license requirements. In May 2002 and July 2002, when Mr. Trujillo contacted the NRC regarding RTI's license, he never informed the NRC that he was planning to use RTI's license to purchase and use gauges for STI. The purpose of his calls was to ask whether he was still listed as the RSO on RTI's license. Further, it is notable that he did not contact the NRC immediately prior to purchasing the gauges to find out if he was still listed on the RTI license. The gauges were purchased several weeks after his last contact with the NRC. On September 13, 2002, when Mr. Trujillo again contacted the NRC to determine if his name was still on the RTI license, and was told that he was no longer listed as the RSO, Mr. Trujillo did not inform the NRC that STI was already in possession and using the gauges, and STI continued to possess and use the gauges until they were confiscated by the Custer County, Idaho Deputy Sheriff later that month.

III

Based on the above, the NRC has concluded that Mr. Trujillo deliberately violated NRC requirements in 10 CFR 30.3 when he purchased, possessed and used portable gauging devices containing licensed material without an NRC license. To have adequate assurance that the public health and safety will be protected, the NRC must be able to rely on the integrity of individuals to comply with NRC requirements. Mr. Trujillo's actions have raised serious doubts as to whether he can be relied upon to comply with NRC requirements and to be honest with the NRC during its inspections and investigations.

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. Trujillo were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Trujillo be prohibited from any involvement in NRC-licensed activities for a period of three (3) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Trujillo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 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 30.3, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Lowell S. Trujillo is prohibited for three (3) 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 in NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20 and 10 CFR 31.6.
2. If Mr. Trujillo is currently involved in NRC-licensed activities, Mr. Trujillo 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.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Lowell S. Trujillo of good cause.

V

In accordance with 10 CFR 2.202, Mr. Lowell S. Trujillo 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, DC 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. Trujillo 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: Rulemakings and Adjudications Staff, 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 Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Trujillo if the answer or hearing request is by a person other than Mr. Trujillo. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than Mr. Trujillo 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 § 2.714(d).

If a hearing is requested by Mr. Trujillo 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. Trujillo, 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Carl J. Paperiello
Deputy Executive Director for Materials,
Research and State Programs

Dated this 26th day of June 2003

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