

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

James L. Mulkey

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IA 97-012

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.

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 indicated during the predecisional enforcement conference on October 2, 1996, that he left the position of RSO for the Wexford facility at the end of 1992 to work in Florida. However, during the conference, Mr. Mulkey also indicated that at the time he responded to the NRC in the July 14, 1993 letter, he was the RSO and was responsible for compliance with the license.

III

Based on the above, Mr. Mulkey, former Vice President and RSO 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). Specifically, as a result of Mr. Mulkey's actions, 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. Mr. Mulkey also engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2) by deliberately providing false information to the NRC during the December 2, 1993 telephone discussion with a representative of the NRC. Specifically, 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.

Moreover, Mr. Mulkey, an employee 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.

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. Mulkey's actions in causing the Licensee to be in violation of NRC requirements and in deliberately violating 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.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Mulkey, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Mulkey 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. Mulkey were involved in NRC-licensed activities. In addition, I find that Mr. Mulkey 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. Mulkey be prohibited from involvement in NRC-licensed activities for five 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. 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, and 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. James L. Mulkey is prohibited for five 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. Mulkey 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. The first time that Mr. Mulkey engages in an NRC-licensed activity following the five year prohibition, he shall notify the Director,

Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least five days prior to the performance of the licensed activity or his being employed to perform NRC-licensed activities (as described in A. above). The notice shall include the name, address, and telephone number of the employer or the entity where he will be involved in the NRC-licensed activity. In the notification, Mr. Mulkey 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. Mulkey of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mulkey 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. Mulkey 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. Mulkey if the answer or hearing request is by a person other than Mr. Mulkey. If a person other than Mr. Mulkey 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. Mulkey 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. Mulkey 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.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 11th day of February 1997

Mr. James Mulkey

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