

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the matter of)

FINLAY TESTING LABORATORIES, INC.)
Testing and Inspection Service)
99-940 Iwaena Street)
Aiea, Hawaii 96701)

Docket No. 030-13435
License No. 53-17854-01
EA 88-69

ORDER CONTINUING SUSPENSION OF LICENSE
(EFFECTIVE IMMEDIATELY) AND ORDER TO SHOW
CAUSE WHY LICENSE SHOULD NOT BE REVOKED

I

Finlay Testing Laboratories, Inc. (the licensee), Testing and Inspection Services, 99-940 Iwaena Street, Aiea, Hawaii 96701, is the holder of Byproduct Material License No. 53-17854-01 (license) issued by the Nuclear Regulatory Commission (NRC/Commission). The license authorized the licensee to possess and use licensed materials (cobalt-60, iridium-192, and cesium-137 sources of up to 30, 100, and 0.14 curies per source, respectively) in industrial radiography and survey instrument calibration. On September 21, 1987 the license was suspended by Order entitled "Order Suspending License (Effective Immediately)" pending further investigation of the licensee. Pursuant to 10 CFR 2.202(f), that Order was temporarily effective pending further order. This Order addresses the results of the further investigation and continues the suspension directed by the September 21, 1987 Order.

II

In response to allegations received by the NRC Region V office, an inspection and an investigation of alleged violations of NRC requirements were initiated on August 31, 1987. The inspection and investigation indicated that on February 9 and 14, 1987 and August 18, 1987, the licensee had caused the shipment of radiographic exposure devices containing radioactive sources on

passenger-carrying aircraft by concealing the nature of the material being offered for transport. As a result, on September 21, 1987, the NRC issued an Order Suspending License, effective immediately.

III

Since issuance of the September 21, 1987 suspension order, the NRC staff has continued to investigate and inspect the performance of the licensee in terms of compliance with NRC regulations, including the alleged willful and repeated violations of federal regulations involving the shipment of radiographic exposure devices on military and civilian passenger aircraft flights. Investigation findings since the September 21, 1987 Order have revealed new information indicating further examples of violations showing that the licensee was unable or unwilling to comply with the Commission's requirements to protect the public health and safety. These violations, together with those that were the basis of the previous Order, are set out in detail in the attached Notice of Violation. The more significant violations are summarized as follows:

- A. Contrary to applicable NRC and Department of Transportation (DOT) regulations designed to prevent radioactive exposure of airline passengers and employees, on February 9 and 14, 1987 and April 3 and 14, 1987, on six separate passenger carrying flights, the licensee shipped concealed radiographic exposure devices containing licensed radioactive material between the islands of Hawaii and Oahu.

Furthermore, contrary to requirements, there are no records of surveys necessary to demonstrate that, in each instance, the source was in its

shielded position. Of these shipments, at least four involved more than one licensee employee.

Also, on January 29, 1987 and August 18, 1987, the licensee delivered radiographic exposure devices to military transportation authorities for transport between Oahu and Johnston Island on military passenger/cargo aircraft without revealing the nature of the material being offered for shipment and without proper package certification, labeling, and shipping documents.

- B. In its response of October 5, 1987 to the NRC Order of September 21, 1987, the licensee stated:

The transportation violations that occurred were isolated, aberrational and unanticipated events in the job performance of the involved radiographers. They were not authorized by Finlay Testing or Gordon Finlay, and certainly were not the usual course of business at Finlay Testing.

Contrary to this assertion, the evidence developed by the investigation indicates that transportation violations were regular occurrences and were the result of deliberate and willful conduct of Finlay Testing. The evidence indicates that, of the eight licensee employees who performed radiography for the licensee in 1987, seven have admitted or have been identified as having taken part in shipments that violated significant requirements. The licensee's Radiation Safety Officer/General Manager was among the involved employees.

The evidence further shows that in at least two instances, the violations occurred with the knowledge of, and in one of those instances, at the direction of, the president and owner of Finlay Testing Laboratories, Inc., Gordon Finlay, notwithstanding objections by the employees involved that the shipments were improper. In one shipment from Johnston Island to Oahu, Gordon Finlay took possession of the source in an unmarked container when it arrived at the MAC terminal. Prior to the shipment, Mr. Finlay advised the employee who was bringing the source to Oahu not to divulge to anyone the nature of the material being shipped.

The evidence indicates that Mr. Finlay was directly involved in these violations. For example, the evidence indicates that although he called the U. S. Army Director of Logistics several times and learned the correct procedures for packing and labeling a source for transportation by the Military Airlift Command, he ignored the procedures.

The licensee was unable to provide the NRC inspectors required records associated with source utilization on the island of Hawaii for the dates February 9-14, 1987 and April 3 and 14, 1987, the dates of improper shipments to the island of Hawaii. In contrast, the licensee was able to provide to the NRC inspectors the required records, in all but one case, for source utilization off the island of Oahu for shipments where the records indicated that shipments were proper. A reasonable inference from the absence of source utilization records and shipping documents for dates related to improper shipments is that Finlay Testing Laboratories, Inc., had attempted to prevent the NRC from discovering the transportation violations through normal inspection techniques.

- C. The license specifies that sources were to be used by, or under the supervision of, Gordon Finlay or individuals who had completed the training program described in letters dated February 28, 1983 and August 2, 1983. Finlay Testing violated training requirements specified in the license and in 10 CFR Part 34 as to five licensee employees. The evidence indicates that at least five licensee employees performed work with radiographic equipment without completing one or more of the following training requirements: completion of classroom training; completion of written and field examinations; and receipt from the licensee of required written safety procedures.
- D. The investigation identified numerous instances where the licensee violated several important areas of its radiation safety program. Each of these failures constitutes a violation of Commission requirements. The violations include:
1. Failures to post radiation and high radiation areas.
 2. Failures to provide constant surveillance to prevent unauthorized entry of individuals into restricted areas when radiography was being performed.
 3. Failures to lock radiographic exposure devices.
 4. Failures to secure radiographic exposure devices against unauthorized removal.

5. Use of partially discharged pocket dosimeters for personnel radiation monitoring.

- E. The investigation identified numerous instances where the licensee failed to maintain required records.

Specifically, on at least forty occasions during licensed radiographic operations since October 4, 1986, the licensee failed to prepare or to maintain required records that show one or more of the following: (1) the utilization of radiographic sources; (2) the results of exposure device safety inspections; (3) the radiation surveys needed to establish boundaries of restricted areas; (4) radiation surveys performed following the return of radiographic sources to storage; and (5) the readings from pocket dosimeters worn during radiographic operations.

IV

In the attached Notice of Violation, due to the willfulness and deception employed in repeatedly transporting radioactive sources in violation of regulatory requirements, the Severity Level assessed for violations I.A through D has been increased to Severity Level I in accordance with Section III of the "General Statement of Policy and Procedures for NRC Enforcement Action," 10 CFR Part 2, Appendix C (1987). The severity level assessed for violations II.A through X has been increased to Severity Level II in accordance with Section III of the Enforcement Policy Statement, as these violations demonstrate a careless disregard for NRC requirements.

V

The federal regulations for shipping radioactive material by air have been established, in part, to protect passengers in aircraft and personnel who handle baggage and cargo from receiving radiation exposure from radioactive material. For the safety of handlers and passengers, the regulations require packaging, labeling, surveying, documentation, and storage limitations for carriage of radioactive material, and also limit the types of flights on which the material may be transported. Regulations concerning training of personnel, surveying of sources and work sites, proper security for radioactive sources, and maintenance of records have been promulgated to protect the health and safety of the public, including licensee employees.

The information presented in this Order and in the attached Notice of Violation shows that the violations described in the September 21, 1987 Order were not isolated cases. As detailed in the Notice of Violation, there were at least eight improper shipments by seven licensee employees over an eight month period, demonstrating the licensee's willingness to violate NRC requirements when expedient. Indeed, with regard to more than one shipment, the owner and president of Finlay Testing Laboratories directed the shipping of the radiographic exposure device in violation of federal requirements.

Information currently available to the NRC staff establishes that the licensee was unwilling, over an extended period of time, to comply with the Commission's requirements to protect the public health and safety when compliance with the requirements would delay the transport of the licensed material or be otherwise

inconvenient. Furthermore, the licensee has demonstrated an unwillingness or an inability to comply with the obligations to protect the public health and safety that must be assumed by those to whom a license is entrusted. This unwillingness or inability to comply is shown by the licensee's violations of requirements to properly survey and to adequately post radiation areas, to properly secure devices when in storage, to use adequately trained and qualified personnel, to properly monitor exposure of employees, to maintain numerous records, and to exercise adequate control of licensed activities. The lengthy list of violations demonstrates a serious breakdown of management control. In sum, the licensee has shown a disregard for NRC requirements and for the public health and safety.

Given the number and nature of violations and the large number of employees involved relative to the total number of employees performing licensed activities, the NRC no longer has reasonable assurance that licensed activities will or can be conducted without undue risk to the public health and safety. If, at the time the license was issued, the NRC had known of the licensee's inability or unwillingness to control licensed activities, the license would not have been issued. Therefore, I have determined that permitting this licensee to conduct licensed activities would be contrary to the public health and safety and that the license should be revoked. I have also determined pursuant to 10 CFR 2.201(c) and 2.202(f), that the public health and safety requires the continued suspension of the license until the revocation issue is resolved, and that no prior notice is required.

VI

Accordingly, in view of the foregoing and pursuant to Sections 81, 161b, 161c, 161d, 161e, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 30 and 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Activities under License No. 53-17854-01 shall continue to be suspended.

IT IS FURTHER ORDERED THAT:

The licensee shall show cause, in accordance with Section VII of this Order, why License No. 53-17854-01 should not be revoked.

The Regional Administrator, Region V, may, in writing, relax or rescind any of the above provisions on demonstration of good cause by the licensee.

VII

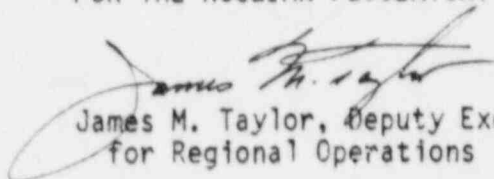
Pursuant to 10 CFR 2.202(b), the licensee may show cause why License No. 53-17854-01 should not be revoked by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section VI above. Upon consent of the licensee to the provisions set forth in Section VI of this Order, or on failure of the licensee to file an answer within the specified time, the license shall be revoked without further Order.

VIII

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of this Order. Any answer to this Order and any request for a hearing shall be submitted to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, U. S. Nuclear Regulatory Commission, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or a request for a hearing shall not stay the immediate effectiveness of the continuation of the suspension.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



James M. Taylor, Deputy Executive Director
for Regional Operations

Dated at Bethesda, Maryland
this 11th day of April 1988.