

deliberately transferred nuclear material to DGE, a person not authorized to possess or use such material, in violation of 10 CFR 30.41.

III

Based on the above, it appears that Dr. Abdulshafi engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 30.41(a) and (b)(5). Dr. Abdulshafi deliberately transferred six Troxler moisture density gauges containing byproduct material to a person not authorized to possess or use such material.

The NRC must be able to rely upon licensees and their employees to comply with NRC requirements, including the requirement that byproduct material may be transferred only to persons authorized to receive such materials, in order to protect public health and safety. Dr. Abdulshafi's deliberate action in causing the Licensee to violate 10 CFR 30.41 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 Dr. Abdulshafi were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Abdulshafi be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. Abdulshafi is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the 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, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. Dr. Abdulshafi is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. 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 pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. Abdulshafi is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the

NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. Abdulshafi shall, within 20 days of acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 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, Dr. Abdulshafi shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon a demonstration by Dr. Abdulshafi of good cause.

V

In accordance with 10 CFR 2.202, Dr. Abdulshafi 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 Dr. Abdulshafi 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 Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. Abdulshafi if the answer or hearing request is by a person

other than Dr. Abdulshafi. If a person other than Dr. Abdulshafi 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 Dr. Abdulshafi, 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.

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 effective and 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.

Dated at Rockville, Maryland this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99-8872 Filed 4-8-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 98-059]

Dr. Mohamed El-Naggar; Order Prohibiting Involvement in NRC-Licensed Activities

I

Dr. Mohamed El-Naggar (Dr. El-Naggar) is the owner of Diversified Global Enterprise Company (DGE), neither an NRC licensee nor an Agreement State licensee. DGE purchased the physical assets of DAS Consult, Inc., (DAS or Licensee), including, in particular, DAS assets subject to an NRC license. DAS is the holder of Byproduct Material License No. 34-26551-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein.

II

Between June 19 and 25, 1998, the NRC conducted an inspection of DAS's

licensed activities to determine if byproduct material was being used, stored, or transferred in accordance with NRC regulations. The inspection was initiated because DAS failed to pay its annual fee and attempts to contact the Licensee by telephone and mail were unsuccessful. The NRC inspector discovered that, in January 1997, the physical assets of DAS, including six moisture density gauges containing certain byproducts material, were sold to DGE. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. No person may receive or possess byproduct material except as authorized by a specific or general license as required pursuant to Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Neither Dr. El-Naggar nor DGE had an NRC license.

On June 29, 1998, the NRC Office of Investigations (OI) initiated an investigation to determine, among other things, whether DGE possessed six moisture density gauges containing byproduct material in willful violation of NRC requirements. Based on the evidence obtained by OI and during a predecisional enforcement conference with Dr. A. Abdulshafi, the owner of DAS, on January 5, 1999, the NRC staff concludes that DGE, through the conduct of Dr. El-Naggar, possessed byproduct material in deliberate violation of NRC requirements. Between January and May 1997, the gauges containing byproduct material remained at the original DAS location on Kenny Road, where they were tendered by Dr. A. Abdulshafi, and trained gauge users who had been authorized to use the devices under the DAS license. On or about June 1997, DGE moved the gauges to another location, and the business association between DGE and DAS ended. Dr. El-Naggar was repeatedly informed by one of his employees between May and June 1997 that DGE was required to have an NRC license to possess the gauges. However, Dr. El-Naggar did not submit an application for an NRC license. In June 1998, as a result of the NRC inspection at DAS, DAS retrieved the gauges from DGE and properly transferred them to a company authorized to possess and use them.

Between December 1, 1998 and January 20, 1999, three attempts were made by the NRC staff to schedule a predecisional enforcement conference with Dr. El-Naggar. The NRC staff was unsuccessful in scheduling this conference with Dr. El-Naggar.

III

Based on the above, it appears that Dr. El-Naggar, owner of DGE, deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Specifically, the NRC has concluded that Dr. El-Naggar, knowingly possessed six Troxler moisture density gauges containing byproduct material without an NRC license. Dr. El-Naggar's conduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements. Consequently, in light of the nature of the violation, the length of time the noncompliance existed, and the deliberate nature of the violation, 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 Dr. El-Naggar were permitted to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. El-Naggar be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. El-Naggar is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the 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, 10 CFR 30.3, and 10 CFR 150.20, *It is hereby ordered that:*

1. Dr. El-Naggar is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. 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 pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. El-Naggar is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. El-Naggar 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.1 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, Dr. El-Naggar shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will not comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. El-Naggar of good cause.

V

In accordance with 10 CFR 2.202, Dr. El-Naggar 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 Dr. El-Naggar or other persons 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 Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. El-Naggar if the answer or hearing request is by a person other than Dr. El-Naggar. If a person other than Dr. El-Naggar 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 Dr. El-Naggar 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.

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 effective and 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 31st day of March 1999.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99-8870 Filed 4-8-99; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[IA 98-066, EA 98-538, Docket No. 150-00019, License No. MD-33-095-01 (expired)]

Dale Todd and Roof Systems Design, Inc., Bayamon, Puerto Rico 00961; Order Prohibiting Involvement in NRC Licensed Activities

I

Mr. Dale Todd is employed as the President of Roof Systems Design, Inc. (RSDI). RSDI is a Pennsylvania Corporation, formerly doing business in Laurel, Maryland and now doing business in Bayamon, Puerto Rico. RSDI (a Maryland Licensee) possessed and used radioactive materials at its Laurel, Maryland facility under the authority of Maryland License No. MD-33-095-01, Amendment No. 2, issued by the Maryland Department of the Environment (MDE), Radioactive Materials and Compliance Division (RMCD) on May 31, 1994, pursuant to the Maryland Radiation Act, and in reliance on statements and representations made by RSDI. RSDI's Maryland license authorized RSDI to receive, acquire, possess and transfer, within the State of Maryland, Americium-241 (not to exceed 50 millicuries per source) contained in Troxler model 3216 moisture gauges used to locate areas of high moisture content in roof systems. On May 31, 1998, Maryland License No. MD-33-095-01, Amendment No. 2, expired.

II

On April 23, 1998, the Nuclear Regulatory Commission (NRC) was notified by MDE/RMCD, that Mr. Todd had moved RSDI equipment and operations to the Commonwealth of Puerto Rico, an area within the NRC's jurisdiction. An investigation by the NRC Office of Investigations (OI) was initiated on May 8, 1998, to determine whether Mr. Todd and RSDI were in unauthorized possession of moisture gauges containing byproduct material, without a specific or general license issued by the NRC. Based on the evidence developed, OI determined that RSDI willfully possessed and used Troxler moisture gauges, containing byproduct material, in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC. Specifically, on May 8, 1998, Mr. Todd and RSDI were found to be in possession of four Troxler Model Number 3216 moisture gauges in Puerto Rico, each containing approximately 40 millicuries of Americium-241 without having obtained an NRC license, in violation of 10 CFR 30.3 and 10 CFR 150.20. In addition, based on statements Mr. Todd made to OI, the gauges were used at job sites in Puerto Rico, including Searle Pharmaceutical in 1992 and Ft. Buchanan and Intel in Las Piedras in September 1997 without a specific or general license issued by the NRC, in violation of 10 CFR 30.3.

Mr. Todd acknowledged to OI that he was aware that the jobs in Puerto Rico required an NRC license and that one had not been obtained. In addition, Mr. Todd told OI that he and RSDI also conducted licensed activities in New Jersey, Pennsylvania, and Virginia, areas of NRC jurisdiction, without a specific or general NRC license.

On May 12, 1998, Confirmatory Action Letter (CAL) 2-98-003 was sent to Mr. Todd confirming that he agreed to transfer the four RSDI gauges to an authorized recipient by June 7, 1998.

Mr. Todd confirmed that the four moisture gauges were transferred to an authorized recipient by letter to Mr. Mark Lesser of the NRC, dated June 11, 1998. In addition to the May 12, 1998 CAL, the NRC also sent Mr. Todd a December 30, 1998 letter that informed him of the terms of the Confirmatory Order and that requested Mr. Todd to inform the NRC whether he consented to the issuance of the Order. Mr. Todd informed the NRC in a facsimile dated December 31, 1998, that he understood the terms of this Order and that he consented to the issuance of the Order; however, he expressed reservation concerning the scope of the rights he

was waiving. By letter dated January 11, 1999, a Confirmatory Order was forwarded to Mr. Todd for his signature. Subsequently, on February 18, 1999, NRC contacted Mr. Todd to discuss the proposed Order, at which time he indicated agreement with its provisions and his intent to sign and facsimile the Order to the NRC. To date, no response has been received from Mr. Todd.

III

The Commission's regulations in 10 CFR 30.3 specify that, except for persons exempt as provided in Parts 30 or 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued by the NRC. In accordance with 10 CFR 150.20(a), any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted an NRC general license to conduct the same activity in a non-Agreement State, provided the provisions of 10 CFR 150.20(b)(1) have been met. Pursuant to 10 CFR 150.20(b)(1), persons engaging in such activity must file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office. Based on the facts set forth above in Part II, and the fact that Mr. Todd and RSDI never filed an application for a specific license or obtained a general license under 10 CFR part 150 by filing NRC Form 241 and/or maintaining a Maryland office, the NRC has concluded that Mr. Todd and RSDI willfully possessed and used Troxler moisture gauges, without a specific or general license issued by the NRC, in violation of 10 CFR 30.3. Furthermore, based on the facts that (1) Mr. Todd told OI that he knew that his and RSDI's activities in Puerto Rico required an NRC license and (2) Mr. Todd chose not to obtain an NRC license, the NRC has concluded that Mr. Todd and RSDI have engaged in deliberate misconduct, in violation of 10 CFR 30.10. Both Mr. Todd's and RSDI's past activities raise serious doubt as to whether they can be relied upon to comply with NRC requirements in the future.

Mr. Todd's and RSDI's failure to obtain a specific or general license resulted in the NRC being uninformed that activities involving the use of radioactive materials were being conducted in areas of NRC jurisdiction. Because of Mr. Todd's and RSDI's failure to file NRC Form 241, the NRC