

Dated at Rockville, Maryland, this 14th day of September 2005.

For the Nuclear Regulatory Commission.

**William A. Macon, Jr.,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 05-18798 Filed 9-20-05; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[IA-05-042]

### John Myers, Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

#### I

John Myers (Mr. Myers) is owner, President and sole employee of Universal Calibrations, located in Westbrook, Maine. Universal Calibrations does not possess a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR part 30 or any Agreement State. Mr. Myers is certified by Campbell-Pacific Nuclear International, Inc. (CPN) a manufacturer of nuclear gauging devices, and an Agreement State Licensee located in California, to sell and repair their portable gauges and to train users in gauge operations. Mr. Myers performed such services for Engineering Consulting Service, (ECS, now ECS Mid-Atlantic, LLC), an NRC licensee, based on his CPN certifications. These services were provided to the licensee at its Richmond and Chantilly, Virginia facilities.

#### II

On April 9, 2004, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Myers (1) deliberately provided materially inaccurate information to staff at the ECS, Richmond, facility in order to purchase a portable nuclear gauge containing NRC licensed material with the knowledge that he was not authorized to possess licensed material, and (2) took possession of several other portable nuclear gauges from the ECS, Chantilly Facility without a NRC or Agreement State license. OI Report No. 1-2004-019 was issued on March 16, 2005, and the information developed during that investigation concluded that Mr. Myers was not licensed by the NRC or an Agreement State, to acquire or possess licensed material in moisture/density gauging devices. Based on the evidence developed during the investigation, the NRC concluded that Mr. Myers (1) took possession of a

portable nuclear gauge on September 15, 2003, from the ECS, Richmond, facility after deliberately providing materially inaccurate information to facility staff, with the knowledge that he was not authorized to possess licensed material and (2) took possession of several portable nuclear gauges on April 29, 2004, and other undetermined dates prior to this date, from the ECS, Chantilly Facility and transported them to the State of Maine. Mr. Myers was not licensed by the NRC as required under 10 CFR part 30 or an Agreement State, to acquire or possess any of the gauges.

During a previous investigation (OI Case No. 1-2004-018), issued on November 30, 2004, the NRC also determined that in November 2003, Mr. Myers took possession of a portable nuclear gauge from Triad Engineering, Inc. without a license to do so. On February 24, 2005, a Notice of Violation was issued to Triad Engineering, Inc. for transferring licensed material to Mr. Myers without verifying that he was authorized to receive the material.

In all of the cases, Mr. Myers transported the portable nuclear gauges (containing NRC licensed radioactive material) that he acquired from the ECS facilities and Triad Engineering, to his facility (UC) in the State of Maine, knowing that he was not authorized to do so.

#### III

Based on the above, the NRC has concluded that Mr. Myers, owner, President and sole employee of Universal Calibrations, deliberately violated 10 CFR 30.3 when he took possession of several portable gauging devices containing licensed radioactive material without a NRC or Agreement State license to possess byproduct material. 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. This requirement is intended to assure that such persons have the requisite facilities, training and experience to protect public health and safety from any radiation hazard associated with the use of byproduct material. The NRC must be able to rely on its licensees, and employees of licensees, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or transferred without a specific or general license. The deliberate violation of 10 CFR 30.3 by Mr. Myers, as discussed above, has raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

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. Myers were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Myers be prohibited from any involvement in NRC-licensed activities for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Myers' 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, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Mr. John Myers is prohibited from engaging in NRC-licensed activities for a period of five (5) years from the 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 Mr. John Myers is currently involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer or other entity, and provide a copy of this Order to the employer or other entity.

3. Subsequent to expiration of the five year prohibition, Mr. John Myers shall, for the next five years and within 20 days of acceptance of his first 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 entity where he is, or will be, involved in the NRC-licensed activities. In the notification, John Myers 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, Office of Enforcement, may, in writing, relax or rescind any of

the above conditions upon demonstration by Mr. Myers of good cause.

## V

In accordance with 10 CFR 2.202, John Myers 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. Myers 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 I, 475 Allendale Road, King of Prussia, Pennsylvania, and to Mr. Myers if the answer or hearing request is by a person other than Mr. Myers. 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](mailto: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](mailto:OGCMailCenter@nrc.gov). If a person other than Mr. Myers 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 2.309.

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

Dated this 9th day of September 2005.

**Martin J. Virgilio,**

*Deputy Executive Director for Materials, Research, State and Compliance Programs, Office of the Executive Director for Operations.*

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards

#### Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 5, 2005, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Wednesday, October 5, 2005—12:30 p.m. until 5 p.m.**

The purpose of this meeting is to discuss the License Renewal Application and associated Safety Evaluation Report (SER) with Open Items related to the License Renewal of the Browns Ferry Nuclear Plant, Units 1, 2, and 3. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Tennessee Valley Authority, and

other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Cayetano Santos (telephone 301/415-7270) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 14, 2005.

**Michael L. Scott,**

*Branch Chief, ACRS/ACNW.*

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards

#### Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 5, 2005, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, October 5, 2005, 10 a.m.—11:30 a.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated