

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.

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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.