

significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene 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). A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 24, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents

Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated in Rockville, Maryland, this 28th day of February, 2003.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[IA 02-049]

### **In the Matter of Mr. Donald Hinman; Order Prohibiting Involvement in NRC-Licensed Activities**

#### **I**

Mr. Donald Hinman (Mr. Hinman) was formerly Operations Manager of United Evaluation Services (UES) (Licensee), also previously known as Accurate Technologies Incorporated. UES was the holder of Byproduct Nuclear Material License No. 29-28358-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized UES to possess and use sealed sources for use in industrial radiography and depleted uranium for shielding material. The license, which was issued on November 16, 2001, was due to expire on November 30, 2011, but was subsequently terminated on January 6, 2003.

#### **II**

On September 25, 2001, an event occurred at the McShane facility in Baltimore, Maryland, involving a radiation injury to one of the Licensee's radiographers. This event was discussed with the Licensee on October 4, 2001. During the discussions, the NRC learned that the radiographer received a very significant radiation exposure to his hands in excess of regulatory limits (at a minimum, approximately 250-300 rem) while performing radiography at that facility. Since the facility was located in Maryland, an NRC Agreement State, the activities related to that

exposure were within the jurisdiction of the State of Maryland.

Although this event occurred while the radiographer was performing activities in an NRC Agreement State, the same equipment was possessed and used pursuant to an NRC license. Therefore, NRC inspections were conducted at the Licensee's facilities in New Jersey during October 2001. Subsequent inspections were also conducted in November 2001 and in May 2002. In addition, the NRC Office of Investigations conducted an investigation, between October 31, 2001, and August 14, 2002, of the Licensee's activities. Based on the inspection and investigation, the NRC has determined, among other things, that Mr. Hinman participated in the creation of false records, allowed an uncertified radiographer to conduct radiography without the presence of a certified radiographer, deliberately conducted radiography at an unauthorized location, and knowingly transported a radiography device without an end cap cover. Specifically, Mr. Hinman:

1. Participated in the creation of a false radiographer annual refresher training examination, dated September 1, 2001 (later changed to September 4, 2001). The examination, which was required to be maintained in accordance with 10 CFR 34.79, was inaccurate because it was not completed by the radiographer whose name was on the examination and it was not completed on the date indicated on the examination. Mr. Hinman's actions in causing this violation were deliberate because he directed an individual to take the exam for the radiographer. Mr. Hinman testified to the NRC, during an enforcement conference conducted on November 19, 2002, that he asked an assistant radiographer to take a refresher training examination for the radiographer on or about October 9, 2001. In addition, that assistant radiographer testified to the NRC, during an enforcement conference conducted on December 12, 2002, that Mr. Hinman asked him to take the test for the radiographer on or about October 9, 2001.

2. Deliberately conducted radiography at a non-licensed location (the licensee's facility located in Beachwood, New Jersey) on at least one occasion (January 18, 2002). The licensee's Beachwood facility was not an approved location to conduct radiography in accordance with 10 CFR 34.41(b). Mr. Hinman admitted to the NRC, during an enforcement conference conducted on November 19, 2002, that he performed radiography at that non-licensed location in Beachwood, New Jersey, and that he

knew at the time that he should not have done the radiography at this location because it was not a location authorized for radiography on the NRC license.

3. Knowingly transported a radiography camera from Tinton Falls, New Jersey, to Baltimore, Maryland, without an end cap. The end cap is required during transport in accordance with 10 CFR 34.20(c)(3). Mr. Hinman admitted to the NRC, during interviews with OI, that he transported (and used) the radiography camera during the week of September 24–28, 2001, and at the time, the camera did not have a required end cap in place, and he knew he could not use or transport the equipment without the end cap.

### III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. Based on the above, the NRC has concluded that Mr. Hinman, as the Operations Manager for the Licensee, violated 10 CFR 30.10. The violations are significant because during the conduct of radiography, there is potential to cause serious harm or injury if unqualified persons are involved in the performance of radiography.

### IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to maintain information that is complete and accurate in all material respects. Although the NRC has not found evidence that Mr. Hinman, who was also a radiographer, had deliberately violated any requirements while performing licensed activities as a radiographer, Mr. Hinman's deliberate violation of Commission regulations as the Operations Manager raises serious questions as to whether he can be relied upon to manage, supervise, or oversee any licensed activities to assure compliance with NRC requirements, including the requirement to maintain complete and accurate information.

Consequently, I lack the requisite reasonable assurance that the management, oversight, or supervision of licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Hinman were permitted at this time to be involved in the management,

oversight, or supervision of NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Hinman be prohibited from any management, oversight, or supervision of persons involved in NRC-licensed activities for a period of one year from the date of this Order. If Mr. Hinman is currently involved in the management, oversight, or supervision of NRC-licensed activities at any NRC licensed facility, Mr. Hinman must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

### V

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 that:*

1. Donald Hinman is prohibited from managing, overseeing, or supervising NRC-licensed activities or individuals while they are engaged in licensed activities, including (but not limited to) the duties of a Radiation Safety Officer, for one (1) year effective from the issuance of this Order, except that Mr. Hinman may supervise an assistant radiographer when acting as a radiographer engaging in NRC licensed activities. 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 Donald Hinman is currently involved in the management, oversight, or supervision of NRC-licensed activities, Mr. Hinman must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Hinman of good cause.

### VI

In accordance with 10 CFR 2.202, Donald Hinman 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. Hinman 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, 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, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Hinman if the answer or hearing request is by a person other than Mr. Hinman. 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 Assistant 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. Hinman 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 2.714(d).<sup>1</sup>

If a hearing is requested by Mr. Hinman 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 V above shall be final twenty

<sup>1</sup> The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

(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 V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 28th day of February, 2003.

**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research, and State Programs.*

[FR Doc. 03-5487 Filed 3-6-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[IA 02-048]

### In the Matter of Ms. Linda Monro; Order Prohibiting Involvement in NRC-Licensed Activities

#### I

Ms. Linda Monro (Ms. Monro) was formerly Assistant Radiation Safety Officer (RSO) of United Evaluation Services (UES) (Licensee), also previously known as Accurate Technologies Incorporated. UES was the holder of Byproduct Nuclear Material License No. 29-28358-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized UES to possess and use sealed sources for use in industrial radiography and depleted uranium for shielding material. The license, which was issued on November 16, 2001, was due to expire on November 30, 2011, but was subsequently terminated on January 6, 2003.

#### II

On September 25, 2001, an event occurred at the McShane facility in Baltimore, Maryland, involving a radiation injury to one of the Licensee's radiographers. This event was discussed with the Licensee on October 4, 2001. During the discussions, the NRC learned that the radiographer received a very significant radiation exposure to his hands in excess of regulatory limits (at a minimum, approximately 250-300 rem) while performing radiography at that facility. Since the facility was located in Maryland, an NRC Agreement State, the activities related to that exposure were within the jurisdiction of the State of Maryland.

Although this event occurred while the radiographer was performing activities in an NRC Agreement State, the same equipment was possessed and used pursuant to an NRC license.

Therefore, NRC inspections were conducted at the Licensee's facilities in New Jersey during October 2001. Subsequent inspections were also conducted in November 2001 and in May 2002. In addition, the NRC Office of Investigations conducted an investigation, between October 31, 2001, and August 14, 2002, of the Licensee's activities. Based on the inspection and investigation, the NRC has determined, among other things, that Ms. Monro deliberately backdated or created false records of activities conducted at the facilities before the NRC inspection was initiated in October 2001. Specifically, Ms. Monro:

1. Created a Radiation Report, dated September 8, 2001, which indicated that Ms. Monro was the radiographer of record when radiography was performed on that date in Paulsboro, New Jersey. The report, which was required to be maintained pursuant to 10 CFR 34.71, was inaccurate in that the radiography was actually performed by another individual (who was not certified to perform radiography) rather than Ms. Monro. Ms. Monro's actions in creating this inaccurate report were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she was not at the Paulsboro site on that date, and she knew, at the time she completed the inaccurate record, that she was not at the Paulsboro site on that date; testimony of other licensee employees confirmed that Ms. Monro did not perform radiography at the Paulsboro site on that date; and Ms. Monro testified to OI, during an interview on April 11, 2002, that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she could not have performed radiography for the Licensee on September 8, 2001.

In addition, Ms. Monro created a Sign Out Log entry, dated September 8, 2001, which indicated that Ms. Monro was the radiographer using the exposure device to perform radiography work on that date. The Sign Out Log, which was required to be maintained pursuant to 10 CFR 34.85, was inaccurate in that the radiography survey was not performed by Ms. Monro. Ms. Monro's actions in creating this inaccurate record were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she created the Sign Out Log record to support that she had performed the radiography on September 8, 2001, and the evidence shows she knew she had not performed the radiography on that date.

2. Created a Radiation Report, dated September 9, 2001, which indicated that Ms. Monro was the radiographer of record when radiography was performed on that date in Linden, New Jersey. The report, which was required to be maintained pursuant to 10 CFR 34.71, was inaccurate in that the radiography was actually performed by another individual rather than Ms. Monro. Ms. Monro's actions in creating this inaccurate report were deliberate in that Ms. Monro testified to OI that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she could not have been performing radiography for the licensee on September 9, 2001. Further, another licensee employee testified that he performed the radiography at that location on that date, and Ms. Monro was not present. The evidence also shows she knew she had not performed the work on that date when she created the Radiation Report.

3. Created a Quarterly Field Audit record, dated September 8, 2001, which indicated that Ms. Monro conducted an audit of an assistant radiographer who was performing licensed activities at the Paulsboro site on September 8, 2001. The record, which was required to be maintained pursuant to 10 CFR 34.79, was inaccurate in that Ms. Monro was not at the Paulsboro site on that date. Ms. Monro's actions in creating this inaccurate record were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she was not at the Paulsboro site on that date, and she knew at the time she completed the record that she had not conducted the audit.

4. Created a Radiation Monitoring Equipment Quarterly Inspection, Inventory and Assignment Log, dated September 10, 2001, which indicated that Ms. Monro completed a quarterly inspection of the licensee's radiation monitoring equipment. The log, which was required to be maintained pursuant to 10 CFR 34.73, was inaccurate in that Ms. Monro did not complete an inspection/inventory of the equipment on that date. Ms. Monro's actions in creating this inaccurate log were deliberate in that Ms. Monro admitted, during an interview with the OI investigator on April 11, 2002, that she signed the Log (which indicated that she conducted the inspection/inventory) even though she believed that it was conducted by someone other than herself; and Ms. Monro also testified to OI, during that interview on April 11, 2002, that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she