

8. Blackfeet Tribe of Indians
9. Bridgeport Indian Colony
10. Buena Vista Rancheria of Me-Wuk Indians
11. Burns Paiute Tribe
12. Cahto Tribe of the Laytonville Rancheria
13. Cahuilla Band of Mission Indians
14. Cherokee Nation of Oklahoma
15. Chicken Ranch Band of Me-Wuk Indians
16. Chippewa Cree Tribe of the Rocky Boy's Reservation
17. Chitimacha Tribe of Louisiana
18. Choctaw Nation of Oklahoma
19. Confederated Salish & Kootenai Tribes of the Flathead Nation
20. Cow Creek Band of Umpqua Indians
21. Dry Creek Rancheria
22. Forest County Potawatomi Community
23. Grand Portage Band of Chippewa Indians
24. Hoopa Valley Tribe
25. Iowa Tribe of Kansas and Nebraska
26. Jackson Rancheria Band of Miwuk Indians
27. Jamul Band of Mission Indians
28. Kalispel Tribe of Indians
29. Kaw Nation of Oklahoma
30. Kialegee Tribal Town Business Committee
31. Kickapoo Traditional Tribe of Texas
32. Little Traverse Bay Bands of Odawa Indians
33. Lower Elwha S'Klallam Tribe
34. Lower Sioux Indian Community
35. Makah Indian Tribe of the Makah Indian Rancheria
36. Metlakatla Indian Community
37. Miccosukee Business Committee
38. Mississippi Band of Choctaw Indians
39. Nooksack Indian Tribe
40. Osage Nation
41. Otoe-Missouria Tribe of Oklahoma
42. Ottawa Tribe of Oklahoma
43. Pascua Yaqui Tribe of Arizona
44. Passamaquoddy Tribe
45. Poarch Band of Creek Indians
46. Pueblo of San Ildefonso
47. Pueblo of Santa Clara
48. Redding Rancheria
49. Reno-Sparks Indian Colony
50. Rumsey Indian Rancheria
51. Sac & Fox Nation of Oklahoma
52. Santa Ysabel Band of Mission Indians
53. Santee Sioux Tribe of Nebraska
54. Seminole Nation of Oklahoma
55. Seneca Nation of Indians
56. Seneca-Cayuga Tribe of Oklahoma
57. Shakopee Mdewakanton Sioux Community
58. Shoalwater Bay Indian Tribe
59. Skokomish Indian Tribe
60. Soboba Band of Mission Indians
61. Sokaogon Chippewa Community
62. Standing Rock Sioux Tribe
63. Stockbridge-Munsee Community
64. Table Mountain Rancheria
65. Thlopthlocco Tribal Town
66. Tohono O'odham Nation
67. Tonto Apache Tribe
68. Trinidad Rancheria
69. United Keetoowah Band of Cherokee Indians
70. Viejas Band of Mission Indians
71. Washoe Tribe of Nevada and California
72. White Earth Band of Chippewa Indians
73. White Mountain Apache Tribe
74. Yavapai Apache Tribe

75. Ysleta De Sur Pueblo Indian Tribe

**Barry Brandon,**

*General Counsel.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-17711 License No. 52-19438-01 EA-99-014]

### In the Matter of NDT Services, Inc., Caguas, Puerto Rico; Order Modifying License (Effective Immediately)

#### I

NDT Services, Inc. (Licensee or NDTs) is the holder of Material License No. 52-19438-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of up to 100 curies of Iridium 192 in sealed radiography sources and up to 20 curies of Cobalt 60 in sealed sources for performing radiography. The license was originally issued on August 21, 1980, was most recently amended on December 12, 1995, and is due to expire on January 31, 2002.

#### II

On March 27, 1998, the NRC issued an Order Suspending License (Effective Immediately) to NDTs based on the seriousness of issues identified during inspections conducted on August 6 and October 4, 1997, and February 6, 1998, and the initial evidence gathered during an investigation conducted by the NRC Office of Investigations (OI). The Order of March 27, 1998, required, among other things, that NDTs immediately suspend all radiographic operations authorized by its license and ensure that the licensed material was placed in locked, safe storage.

In response to the Order of March 27, 1998, NDTs immediately suspended all radiographic operations and secured all licensed material in locked, safe storage at the location specified in Condition 10 of the license. This facility is owned by Crossland Boilers Sales and Service, Inc. (Crossland Boilers).

Pertinent to this issue is the current corporate status of NDTs and Crossland Boilers. Although no corporate relationship exists between NDTs and Crossland Boilers, they have a common owner, Mr. Thomas B. Crossland. On July 24, 1998, the NRC Region II Office received information that Crossland Boilers had filed for Chapter 11 Bankruptcy on May 22, 1998. First Bank of Puerto Rico, a secured lender of

Crossland Boilers, provided security to protect some of the assets of Crossland Boilers, which are subject to liquidation in favor of the Bank. The licensed material is in the same building as these assets.

The security of the sources and continued compliance with the Order of March 27, 1998, was verified during NRC inspections conducted on March 30, June 3, July 16, and August 19, 1998. These inspections confirmed that the licensed material was being maintained inside a fenced building. The fence contained a gate to allow access, and access to the building interior was controlled by a door with a lock. The building contained a vault located on the second floor which has a metal cabinet with three cubicles. Each cubicle possessed a separate lock, and contained two radiographic exposure devices containing Iridium 192 per cubicle (six radiographic exposure devices in total). An additional radiographic exposure device containing a Cobalt 60 source was also located inside the vault (not inside a cubicle). Each radiographic exposure device also contained its own locking device to control licensed material removal and exposure. NRC inspections confirmed that the licensed material and locking devices, including all keys, were under the control of Clarence David Vaughn, President and Radiation Safety Officer (RSO) of NDTs. The inspection of August 19, 1998, confirmed that representatives of First Bank had arranged for a contractor to provide for 24-hour security at the facility. The RSO indicated during the June 3, 1998, inspection his understanding and willingness to contact the NRC should the RSO determine that he can no longer maintain adequate control of the licensed material.

On January 11, 1999, an NRC inspector, accompanied by the RSO, attempted to determine the security of the sources and continued compliance with the Order of March 27, 1998. The RSO informed the inspector at that time that on September 24, 1998, in response to Hurricane Georges, he had conducted an inspection of the facility and confirmed the security and safe storage of the licensed material. During the January 11, 1999 inspection, the NRC and the RSO were unable to gain access to the building as the lock which secured access to the building had been changed. The NRC learned shortly thereafter that a representative of First Bank maintained the key to this lock. After subsequent contact with a First Bank representative, on January 14, 1999, the NRC, the RSO, and Mr. Sergio Olivero, Assistant Vice President for

First Bank, gained access to the building. The NRC determined the status and security of the licensed material on January 14, 1999 to be as follows:

The building perimeter was accessible via the building yard gate. A building truck bay door, used to load and unload equipment/materials, was observed to be significantly damaged such that access to the building interior could easily be accomplished through the bay door. After entry through the building access door, the NRC noted that someone had entered the building previously and had vandalized and ransacked the building interior. The security lock to the vault that housed the licensed material was sheared. A new lock had been placed on the vault; however, the key to the new lock was in close proximity, was visible, and accessible to anyone desiring to gain entry. The NRC, RSO, and the First Bank representative accessed the vault with the key, and found that the locks for the three cubicles which housed the six radiographic devices containing the Iridium 192 licensed material were also sheared. The radiographic device containing the Cobalt 60 licensed material was found to be inside the vault, where the RSO had last verified this device to be (during his September 24, 1998 inspection in the aftermath of Hurricane Georges). The NRC confirmed that all seven radiographic devices remained intact and verified the position of the radiation sources inside the devices by taking local radiation readings. The NRC recommended that the RSO obtain a new lock for the vault and a new lock for the building yard gate. The First Bank representative obtained two new locks. As of January 15, 1999, the NRC has confirmed that these locks were in place. The RSO only has control of the vault lock key, while the RSO and a First Bank representative have control of the building yard gate lock key.

The NRC also observed during the January 14, 1999, inspection that a security guard, who was onsite to monitor the facility, was inattentive to duties and appeared to be sleeping. The NRC subsequently learned that 24-hour security for the building was not maintained, but rather security was provided by First Bank on Mondays through Saturdays, from 7:00 a.m. to 3:00 p.m.

The NRC also learned that the RSO did not have knowledge or accountability of the new vault lock, was unaware that the vault cubicle locks had been sheared, was unaware that the building interior could be easily accessed, and was unaware that the

building interior had been vandalized since his inspection of September 24, 1998.

Discussions with the RSO during the NRC inspections of January 11 and 14, 1999, and during previous NRC inspections as discussed above, identified the following pertinent information:

- The RSO is not currently and has not been financially compensated by Mr. Crossland for his efforts in controlling the security and access to the licensed material, although he has made a good faith effort to do so.
- The RSO does not have access to NDTs corporate monies to initiate transfer of the sources to an authorized recipient.
- The RSO is not authorized by Mr. Crossland to transfer and/or dispose of the sources.
- The RSO has indicated that he may not remain in the Commonwealth of Puerto Rico much longer.
- The RSO, though aware of his inability to access the facility, failed to notify the NRC of his inability to verify the status of the licensed materials.
- NDTS is not currently performing any income generating work.
- Actions initiated following the January 14, 1999, inspection to ensure the security of the licensed material were at the initiative of the NRC, not the RSO.

Mr. Crossland currently is not present in the Commonwealth of Puerto Rico. As of the date of this Order, attempts to contact Mr. Crossland to discuss the status and security of licensed material have been unsuccessful.

### III

The observed lack of security of licensed material presents a hazard to public health and safety and is in violation of Section V.A of the March 27, 1998, Order Suspending License (Effectively Immediately) and 10 CFR 20.1801, which requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. In addition, the corporate and financial status of the licensee, and the uncertainties associated with the ability of the RSO to continue to maintain adequate control over the licensed material, call into question the ability of the licensee to maintain adequate long-term security controls of the licensed material.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 52-19438-01 in

compliance with the Commission's requirements and that the health and safety of the public will be protected. Therefore, the public, health, safety and interest require that License No. 52-19438-01 be modified immediately to require both the relocation of the licensed material to a location where acceptable security can be maintained, and subsequent transfer of the licensed material to an authorized recipient. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conditions 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 30.3, 10 CFR Parts 30 and 34, *It is hereby ordered, Effective immediately*, That LICENSE NO. 52-19438-01 Is modified as follows:

A. Within 24 hours of receipt of this Order, the Licensee shall, (1) take immediate measures to maintain and ensure adequate security of licensed material stored at your facility located at Rio Cañas Industrial Park, Lots 1 and 2, Caguas, Puerto Rico; and (2) identify an interim safe storage location within NDTs control to which the licensed material will be transferred. Within the same 24 hours, the licensee shall contact Mr. Douglas Collins, Director, Division of Nuclear Materials Safety, NRC Region II, at telephone number (404) 562-4700 or through the NRC Operations Center (24-hours a day) at 301-816-5100, to inform him of the actions which have been taken in response to Item (1) above and the proposed interim storage location identified in response to Item (2). Items (1) and (2) are subject to NRC approval. A written response documenting this information shall be submitted under oath or affirmation to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia within 10 days of this Order.

B. Within seven days of receiving NRC approval of the proposed storage location, the Licensee shall: (1) complete leak tests pursuant to 10 CFR Part 34.27(c), to confirm the absence of leakage of radioactive materials and to establish the levels of residual radioactive contamination; (2) submit the results of the leak tests in writing to the NRC Region II office; and (3) transfer the licensed material to the approved storage location. Mr. Douglas Collins, or

his designee, shall be notified immediately following the transfer.

C. Within 30 days of the date of this Order, the Licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41 and submit for NRC approval a completed Form NRC 314. This information should be submitted to the Regional Administrator, NRC Region II, at the address given in Paragraph A above.

D. At least two working days prior to the date of the transfer of the licensed material, the Licensee shall notify Mr. Douglas M. Collins, NRC Region II, at one of the telephone numbers given in Paragraph A above, so that the NRC may observe the transfer of the material to the authorized recipient.

The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

## V

In accordance with 10 CFR 2.202, the Licensee must, and any 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 set forth the matters of fact and law on which the Licensee or any persons adversely affected relies and the reason 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 Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303-3415 and to the Licensee if the answer or hearing request is by a person other than the

Licensee. If a person other than the Licensee 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).

If a hearing is requested by the Licensee 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), the Licensee, 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.*

Dated at Rockville, Maryland this 15th day of January 1999.

For the Nuclear Regulatory Commission.

**Malcolm R. Knapp,**

*Deputy Executive Director for Regulatory Effectiveness.*

[FR Doc. 99-2134 Filed 1-28-99; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-508]

### Washington Public Power Supply System, Washington Nuclear Project Unit 3; Order Revoking Construction Permit No. CPPR-154

Construction Permit No. CPPR-154 issued to Washington Public Power Supply System (the Supply System) on April 11, 1978, authorized the construction of the Washington Nuclear Project Unit 3 (WNP-3) located at the Satsop site, approximately 5 miles south

of the town of Elma in Grays Harbor County, Washington. On November 2, 1984 and March 10, 1986, the Supply System filed timely requests to extend the completion date to July 1, 1999, which request was granted on May 16, 1998. The Supply System also held a second construction permit, CPPR-155, issued on April 11, 1978, for the construction of WNP-5 on the same site as Unit 3. The NRC allowed the construction permit for Unit 5 to expire, with the responsibility for site restoration to be subsumed under the construction permit for WNP-3.

On March 28, 1995, the Supply System submitted a site restoration plan, for WNP-1 and WNP-3, as well as for the previously terminated projects, WNP-4 and WNP-5. In a letter dated June 15, 1998, the Supply System submitted additional information concerning the termination of the construction permit for WNP-3 (the Satsop site).

On August 16, 1996, the Supply System filed a motion for withdrawal of application for an operating license (OL) and for termination of the proceeding before the Atomic Safety and Licensing Board (ASLB). On October 16, 1996, the ASLB issued an order granting the motion, and noted that the NRC staff would terminate the construction permit. 44 NRC 134 (1996). The staff conducted an inspection to verify that the Supply System has maintained the site in an environmentally stable condition and that the facilities are not capable of being operated as utilization facilities (Inspection Report No. 50-508/98-201 dated November 2, 1998). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on January 11, 1999 (64 FR 1644).

Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of this construction permit will have no significant impact on the environment.

For the reasons given above, it is hereby ordered that Construction Permit No. CPPR-154 is terminated. This order is effective upon its date of issuance.

Dated at Rockville, Maryland, this 22nd day of January 1999.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

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