



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

March 17, 2006

EA-05-137

Mr. David Patterson
Chief Financial Officer
Bayou Inspection Services, Inc.
P.O. Box 1065
Amelia, Louisiana 70340

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$6,000 (NRC INSPECTION REPORT 150-00017/04-004, AND OI 4-2004-044)**

Dear Mr. Patterson:

This refers to the predecisional enforcement conference conducted on October 25, 2005, in the Region IV offices in Arlington, Texas. The conference was conducted to review the circumstances surrounding apparent violations of NRC requirements that were identified during an inspection on November 22-23, 2004. The inspection reviewed the Bayou Inspection Services, Inc. (Bayou) radiographic activities at two temporary job sites located in offshore Federal waters in the Gulf of Mexico, a location at which NRC has regulatory jurisdiction. The apparent violations involved: (1) an apparent failure to secure or maintain under constant surveillance a radiographic exposure device in an unrestricted area (10 CFR 20.1801 and 20.1802); (2) an apparent failure to follow the 2-person rule (10 CFR 34.41(a)); and (3) an apparent failure of a radiographer's assistant to wear an alarming ratemeter during radiographic operations (10 CFR 34.47(a)). In addition, we informed you that, based on an investigation conducted by the NRC's Office of Investigations, we were concerned that deliberate misconduct was associated with apparent violations 1 and 2. Our findings were discussed with you during a July 25, 2005, telephonic exit briefing, and were documented in the subject inspection report dated August 25, 2005.

Following the conference, you provided additional information by letter dated November 19, 2005. In your letter, you concluded that Bayou's crew did not violate the 2-person rule. Further, you stated that our inspection report was in error when it stated (in the Executive Summary) that Bayou's former Radiation Safety Officer (RSO) addressed this issue in December 2004. With regard to the apparent deliberate failure to maintain constant surveillance of an unsecured radiographic exposure device in an unrestricted area, Bayou's position was that the former radiographer did not willfully violate this NRC regulation, and that the individual made a mistake. Your letter also provided Bayou's corrective actions for the violations.

On October 25, 2005, the NRC also conducted a predecisional enforcement conference with the former radiographer involved with the apparent deliberate misconduct. Regarding the apparent deliberate violation of the 2-person rule, he stated that the radiographer's assistant was always present during radiographic activities. In order to better understand the circumstances surrounding this apparent violation, the NRC conducted an additional interview

of the (former) radiographer's assistant involved during the inspection. He clarified his previous interview and confirmed that he had been able to observe the radiation boundaries while conducting the radiography. As such, the NRC has concluded that there was no violation of 10 CFR 34.41(a).

After further review of the inspection report, we agree with you that our report was in error when it stated that Bayou's former RSO addressed this apparent violation of the 2-person rule in December 2004. This finding was not discussed with you until the exit briefing on July 25, 2005. A correction to this page of the inspection report is enclosed. Please replace Page 3 of the inspection report with the enclosed replacement page.

Based on the information developed during the inspection, investigation, conference, and your November 19, 2005, letter, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved:(a) two examples of the failure to secure or maintain constant surveillance of licensed material (radiographic exposure devices) in unrestricted areas (10 CFR 20.1801 and 20.1802); and (b) the failure of a radiographer's assistant to wear an alarming ratemeter during radiographic operations (10 CFR 34.47(a)).

In addition, the NRC has determined that willfulness is associated with Violation A. The radiographer stated he consciously left the hasp unlocked on the dark room (with the radiography exposure device inside) when he went upstairs to obtain certain paperwork. We have concluded that he knew he was going to be out of sight of the dark room because he had been upstairs previously. Based on the potential safety significance of leaving a radiographic exposure device unsecured and unattended in two separate instances, including the determination that one of these instances involved willfulness, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III, and is a candidate for a monetary civil penalty. The second violation (Violation B) has been categorized at Severity Level IV and is not a candidate for a monetary civil penalty.

In accordance with the Enforcement Policy in effect at the time of the violation, a base civil penalty in the amount of \$6,000 is considered for a Severity Level III violation (Violation A). Because willfulness (in the form of deliberate misconduct) was involved, the NRC considered whether credit was warranted for both Identification and Corrective Action in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Since this violation was identified by an NRC inspector, Bayou is not deserving of identification credit. However, based on Bayou's November 19, 2005, letter, corrective action credit is warranted. Specifically, Bayou's corrective actions included speaking to the involved personnel about the importance of complying with NRC regulations, reviewing the violations during safety meetings, and most notably, planning to make future field inspections on offshore platforms in addition to the field inspections it conducts on land.

Therefore, to emphasize the importance of controlling licensed material and of preventing deliberate violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$6,000 for the Severity level III violation. In addition, issuance of the

Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning this pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Docket No.: 15000017
License No.: General License Pursuant to
10 CFR 150.20

Enclosures:

1. Notice of Violation
2. Correction to Page 3 of Inspection
Report 150-000017/04-004
3. NUREG/BR 0254

cc (w/Enclosure 1-2):
Louisiana Radiation Control Program Director

ENCLOSURE 1

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY

Bayou Inspection Services, Inc.
Amelia, Louisiana

Docket No. 150-00017
EA-05-137

During an NRC inspection and investigation conducted from November 22, 2004 to July 25, 2005, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C.2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, a controlled area means an area, outside of a restricted area, but inside the site boundary, access to which can be limited by the licensee for any reason; and an unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on November 22 and 23, 2004, the licensee did not secure from unauthorized removal or limit access to radiographic exposure devices containing Iridium-192 sealed sources located on two separate offshore platforms, both of which were unrestricted areas, nor did the licensee control and maintain constant surveillance of this licensed material.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$6,000

II. Violation Not Assessed a Civil Penalty

10 CFR 34.47(a) requires, in part, that the licensee not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, each individual wears on the trunk of the body, a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program processor.

Contrary to the above, on November 22, 2004, an individual working for the licensee did not wear an operating alarm ratemeter when acting as a radiographer's assistant during radiographic operations on an oil/gas platform in offshore waters.

This is a Severity level IV violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Bayou Inspection Services, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as "Reply to a Notice of Violation - EA-05-137" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted and, if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended or revoked, or as to why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty, in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Michael R. Johnson, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North,

11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 17th day of March 2006

ENCLOSURE 2

Correction to Page 3 of Inspection Report 150-000017/04-004

****Corrected Page****

Operating and Emergency Procedures

10 CFR 34.89(b) requires in part, that the licensee maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and temporary jobsite: (3) utilization records for each radiographic exposure device dispatched from that location as required by 10 CFR 34.71; (4) records of equipment problems identified in daily checks of equipment as required by 10 CFR 34.73(a); (7) operating and emergency procedures as required by 10 CFR 34.81; (11) shipping papers for the transportation of radioactive materials required by 10 CFR 71.5 of this chapter; and (12) when operating under reciprocity pursuant to 10 CFR 150.20 of this chapter, a copy of the Agreement State license authorizing the use of licensed materials. On November 22, 2004, on platform A in offshore waters, the licensee failed to have copies available of utilization records and equipment checks as required by 10 CFR 34.89(b)(3) and (4). Further on November 23, 2004 on platform B in offshore waters, the licensee failed to have copies of utilization records, operating and emergency procedures, shipping papers, and a copy of the Agreement State license as required by 10 CFR 34.89(b), (3), (7), (11) and (12). (Section 5)

Posting and Labeling

10 CFR 20.1902(e) requires that the licensee post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material, specified in 10 CFR Part 20, Appendix C, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)." On November 22-23, 2004, two radiographic darkrooms on offshore oil platforms A and B were areas in which 18 and 22 curies of Iridium-192 (an amount of licensed material exceeding 10 times the quantity of such material, specified in 10 CFR Part 20, Appendix C), were stored, were not posted with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)." (Section 6)

Licensee Corrective Actions

On December 1, 2004, the licensee was contacted telephonically and notified of the results of the inspection. The licensee's corporate radiation safety officer (RSO) assured NRC that in the future both radiographers and radiographer's assistants would have proper dosimetry as required by 10 CFR 34.47; all radiographic exposure devices would be secured when unattended as required by 10 CFR 20.1801 and 1802; records and documentation required under 10 CFR 34.89 would be maintained, and that signs and labels would be posted on the darkroom when radiographic exposure devices are in storage.

Bayou Inspection Service, Inc., EA-05-137

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