UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of | ) | |
| | ) | |
| MC SQUARED, INC. | ) | Docket No. 030-37435 |
| Tampa, FL | ) | License No. 09-31230-01 |
| | ) | |
| | ) | EA-07-101, 07-104 |

ORDER IMPOSING CIVIL MONETARY PENALTY

I

MC Squared, Inc. (licensee) is the holder of a materials license issued by the State of Florida, an NRC Agreement State. Most of the licensee's work is conducted under the State's jurisdiction. MC Squared, Inc. also obtained license No. 09-31230-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) on April 5, 2007. This license expires on April 30, 2017. The license authorizes the licensee to possess and use certain byproduct materials in accordance with the conditions specified therein.

II

Although MC Squared, Inc. possessed an Agreement State license from the State of Florida, the NRC inspected and processed enforcement against the licensee because their temporary job site, which was located at the Seminole Tribe Indian Reservation, is under NRC jurisdiction. The inspection of the licensee's activities at the temporary job site in Clewiston, Florida, was completed on March 29, 2007.

The results of this inspection concluded that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated September 13, 2007. The Notice states the nature of the violations, the provision of the NRC's requirements that the licensee violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice in a letter dated October 11, 2007. In its response, the licensee requested that the NRC negate or significantly reduce the civil penalty.

III

After consideration of the licensee's response and argument for mitigation contained therein, the NRC has determined, the violations occurred as stated in the Notice, that the licensee did not provide an adequate basis for negating or significantly reducing the civil penalty, and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to the Atomic Energy Act of 1954, as amended, § 234, 42 U.S.C. § 2282 (1988) ("Act"), and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

> MC Squared, Inc. pay a civil penalty in the amount of $ 3,250 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made MC Squared, Inc. shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with 10 C.F.R. § 2.202, MC Squared, Inc. must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of this Order. In addition, the licensee and any other person adversely affected by this Order 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 answer or 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, and include a statement of good cause for the extension.

The answer shall, 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 the licensee or other person relies, and, if the order is not consented to, the reasons as to why the order should not have been issued. The answer may also demand a hearing.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August, 28 2007, (72 Fed. Reg. 49,139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

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 C.F.R. § 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. 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 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. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.
In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

a) whether the licensee was in violation of the Commission's requirements as set forth in violations of the Notice referenced in Section II above, and

b) whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the licensee admitted, this Order should be sustained.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at

HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at http://www.nrc.gov/site-help/e-submittals/install-viewer.html. Information about applying for a digital ID certificate also is available on NRC's public website at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at http://www.nrc.gov/site-help/e-submittals.html . A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at http://www.nrc.gov/site-help/e-submittals.html or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. § 2.302(g), with their initial paper filing

requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp , unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 30th day of November, 2007

APPENDIX

EVALUATIONS AND CONCLUSION

On September 13, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to MC Squared ($MC^2$), Inc. (Licensee) for two violations identified during the NRC review of the circumstances associated with the theft of a portable nuclear density gauge containing licensed material (ML072560013). The theft occurred sometime between March 2 and March 7, 2007. The licensee responded to the Notice in a letter dated October 11, 2007 (ML073030076). The licensee requested that the NRC negate or significantly reduce the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are contained herein.

RESTATEMENT OF THE VIOLATIONS

A. 10 CFR 150.20(b) requires, in part, that an Agreement State licensee shall, at least three days prior to engaging in each licensed activity within NRC jurisdiction for the first time in a calendar year, file a submittal with the NRC containing an NRC Form 241, a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 C.F.R § 170.31.

   Contrary to the above, the licensee failed to file NRC Form 241 at least three days prior to engaging in licensed activities within NRC jurisdiction. Specifically, from January 1, 2006 through at least March 12, 2007, the licensee stored or used a Troxler Model 3411–B portable gauge containing byproduct material (americium-241 and cesium-137) at two Indian Reservations located in the State of Florida, sites that are within NRC jurisdiction, and did not file NRC Form 241 prior to using the material at these sites.

B. 10 CFR § 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, between March 2, 2007 and March 7, 2007, at a job site on a Seminole Indian Reservation, in Clewiston, Florida, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure a Troxler moisture/density gauge from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the Licensee stored the gauge in a trailer that was unlocked and in an unrestricted area when an authorized user was not present. Although the gauge was in a locked container, there were no physical controls that formed tangible barriers to secure the gauge from unauthorized removal, because the gauge container was not secured to the trailer, and access to the trailer was not controlled. The licensee notified the NRC on March 7, 2007, that the portable gauge had been stolen.

These two violations represent a Severity Level III problem (Supplement VI). Civil Penalty - $3,250

SUMMARY OF THE LICENCEE'S RESPONSE REGARDING THE VIOLATIONS

In its response, the licensee stated that it believed its license in the State of Florida allowed it to use and store the nuclear density gauge anywhere within Florida. The licensee stated that it did not know that the Indian Reservations of the Seminole Tribe of Florida are not under the State of Florida's jurisdiction and that it was required to file for reciprocity or obtain a separate license under NRC jurisdiction for storing and using a portable gauge on an Indian Reservation. The licensee also stated it immediately took corrective actions to file for a Federal license and paid the required fees. Further, the licensee stated that the management team understands the seriousness of the violations and described the corrective actions immediately taken to ensure two independent physical controls exist for securing the portable gauge from unauthorized removal. The actions included having the RSO or a member of the management team perform random checks to ensure the method of protection is strictly adhered to.

NRC'S EVALUATION OF THE LICENSEE'S RESPONSE REGARDING THE VIOLATIONS

The NRC has evaluated the licensee's statements regarding the violations. The NRC recognizes that these are the licensee's first violations of this type and that corrective actions were taken immediately to address the violations; however, not being aware that the Indian Reservations of the Seminole Tribe of Florida are under NRC jurisdiction is not a valid reason for not having filed for reciprocity nor obtaining an NRC license. NRC may not cite the licensee when a portable gauge is stolen under the condition that the licensee was in full compliance with all regulatory requirements regarding physical security, including the requirement to secure the gauge with two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal. However, $MC^2$ was not in full compliance with all regulatory requirements and therefore, an adequate basis did not exist to not cite the violations.

SUMMARY OF LICENSEE'S REQUEST FOR NEGATION OR SIGNIFICANT REDUCTION OF THE CIVIL PENALTY

In its response, the licensee requested negating or significantly reducing the civil penalty, contending that specific mitigating circumstances surrounding the violations should be considered by the NRC, and that the fine will impose a significant financial hardship on their small company. The mitigating circumstances provided by the licensee included: 1) this is its first violation; 2) it did not know the Indian Reservations are separate entities; and, 3) immediate measures were taken to rectify the situation and prevent future violations. The licensee noted that the senior management team and the employees of $MC^2$ are committed to health and safety and place significant importance on supporting their Radiation Safety Officer and providing the tools necessary to achieve safe operation of nuclear devices.

NRC EVALUATION OF LICENSEE'S REQUEST FOR NEGATION OR SIGNFICANT REDUCTION OF THE CIVIL PENALTY

In accordance with Section VI.C.2 of the Enforcement Policy, the base civil penalty amount for a Severity Level (SL) III violation involving the loss of this type of radioactive material is $3,250. The licensee, while contending that a financial loss occurred, did not provide any evidence that

payment of the civil penalty would create a financial hardship. Also, while the NRC acknowledges that the licensee took prompt and comprehensive corrective actions, a civil penalty was nonetheless warranted, consistent with the NRC Enforcement Policy, because the violation of 10 CFR § 30.34(i) contributed to the theft of a gauge containing radioactive material. Issuance of this civil penalty is consistent with one of the purposes of the Enforcement Policy, which is to deter noncompliance, including for lost sources, by emphasizing to the licensee and other licensees the importance of compliance with NRC safety and security requirements. In addition, the NRC recognized that a contributing factor for these two violations was that $MC^2$ did not fully understand the NRC regulations regarding 10 CFR § 150.20(b) and 10 CFR § 30.34(i). The NRC took this into consideration and processed the two violations as one SL III problem, rather than citing two separate SL III violations, which could have each been individually considered for a civil penalty.

NRC CONCLUSION

The NRC has concluded that these violations occurred as stated in the Notice and that an adequate basis was not provided by the licensee for the NRC to negate or significantly reduce the civil penalty. Consequently, the proposed civil penalty in the amount of $3,250 should be imposed.