

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: 10 CFR 2.206 Petition Review Board  
RE X-Ray Back Scanners

Docket Number: (n/a)

Location: (telephone conference)

Date: Thursday, December 16, 2010

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Pages 1-19

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 10 CFR 2.206 PETITION REVIEW BOARD (PRB)

5 CONFERENCE CALL

6 RE

7 X-RAY BACK SCANNERS

8 CONCERNING AUTOCLEAR CONTROL SCREENING

9 AND SCINTREX TRACE DIVISION

10 + + + + +

11 THURSDAY, DECEMBER 16, 2010

12 + + + + +

13 The conference call was held, Jim Luehman,  
14 Chairman of the Petition Review Board, presiding.

15 PETITIONER: THOMAS SAPORITO

16 NRC PERSONNEL:

17 JIM LUEHMAN, Petition Review Board Chairman

18 Deputy Director, Materials Safety &

19 State Agreements, FSME

20 LISA DIMMICK, Petition Manager

21 Health Physicist, FSME

22 JOE DeCICCO, Petition Coordinator

23 Health Physicist

24 KERSTUN DAY, Enforcement Specialist,

25 Office of Enforcement

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LICENSEE PERSONNEL:

KEN VOIGTLAND, Director of Key Account  
Relations for AutoClear Control  
Screening

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## P R O C E E D I N G S

2:12 p.m.

MS. DIMMICK: Okay, I believe we're ready.

I apologize for the slight delay. I believe everyone's on the call. This is a Petition Review Board discussion with the petitioner, and the subject of the petition is x-ray back scanners, concerning AutoClear, Scintrex Trace Corporation, and Control Screening. The purpose of this meeting is for the petitioner, Thomas Saporito, to address the Petition Review Board for the petition on the operation and manufacture of x-ray back scanners by the licensee, collectively AutoClear, Scintrex Trace Corporation, and Control Screening.

The agenda for today is a welcome and introductions, introductions by the Petition Review Board chairman, a presentation by the petitioner, and then closing remarks by the Petition Review Board chairman. So I'd like to start off with welcomes and introductions. I'd like to thank everybody for attending this meeting. My name is Lisa Dimmick, and I am an NRC staff health physicist. We are here today to allow the petitioner, Thomas Saporito, to address the Petition Review Board regarding the 2.206 petition

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1 dated November 27, 2010. I am the petition manager  
2 for this petition. The Petition Review Board chairman  
3 is Jim Luehman.

4 As part of the Petition Review Board  
5 review of this petition, Thomas Saporito has requested  
6 this opportunity to address the PRB, or Petition  
7 Review Board. This meeting is scheduled from 2:00 to  
8 3:00 p.m. eastern time. This meeting is being  
9 recorded by the NRC Operations Center, and will be  
10 transcribed by a court reporter. The transcript will  
11 become a supplement to the petition, and the  
12 transcript will also be made publicly available. I'd  
13 like to open this meeting with introductions. As we  
14 go around the room, here first at headquarters, and  
15 then we'll open it up to those on the call. Please be  
16 sure to clearly state your name, your position, and  
17 the office that you work for within the NRC for the  
18 record. And I'll start off, again, I am Lisa Dimmick,  
19 I am a health physicist in the Office of Federal and  
20 State Materials & Environmental Management Programs.

21 MR. LUEHMAN: Hi, my name is Jim Luehman,  
22 as Lisa said, I'm the chairman of this Petition Review  
23 Board. My position at the NRC is I'm the Deputy  
24 Director of the Division of Material Safety and State  
25 Agreements and FSME.

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1 Mr. DeCicco: This is Joe DeCicco, and I'm  
2 a staff health physicist here at the NRC, and I am  
3 the petition coordinator for the office. I am not  
4 actually part of the Board, but I just kind of sit in  
5 to gather information and to provide any assistance  
6 that may be needed.

7 MS. DIMMICK: Okay. We've completed  
8 introductions here at headquarters; at this time, are  
9 there any NRC participants on the phone?

10 MS. DAY: Hello, this is Kerstun Day, I'm  
11 an enforcement specialist in the Office of  
12 Enforcement.

13 MS. DIMMICK: Are there any  
14 representatives for the licensee on the phone?

15 MR. VOIGHTLAND: This is Ken Voightland,  
16 I'm the Director of Key Account Relations for  
17 AutoClear Control Screening.

18 MS. DIMMICK: Okay. And for the record  
19 Mr. Saporito, would you please introduce yourself?

20 MR. SAPORITO: Yes, my name is Thomas  
21 Saporito, I'm the petitioner.

22 MS. DIMMICK: Okay. Are there any other  
23 members of the general public on the phone? As we go  
24 forward, I'd like to emphasize that we each need to  
25 speak clearly and loudly to make sure that the court

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1 reporter can accurately transcribe this meeting. If  
2 you do have something that you would like to say,  
3 before you say anything, please state your name for  
4 the record. And for those of you dialing in, please  
5 remember to mute your phones to minimize any  
6 background noise or distractions. If you do not have  
7 a mute button, this can be done by pressing the keys  
8 star six. To un-mute, the star six keys again. And  
9 so thank you, and at this time, I'll turn the meeting  
10 over to the Petition Review Board chairman, Jim  
11 Luehman.

12 MR. LUEHMAN: Okay, thanks Lisa. This is  
13 Jim. I think that Lisa's pretty well described the,  
14 you know, why we're here and basically I'll just touch  
15 on a few things on the process, and try to keep that  
16 as brief as possible so we can get on to the heart of  
17 the meeting. As been referred to, this petition was  
18 submitted under 2.206 of Title 10 of the Code of  
19 Federal Regulations, and this is the primary mechanism  
20 for the public to request enforcement actions by the  
21 NRC.

22 You know, the process permits anyone to  
23 petition the NRC to take enforcement action related to  
24 NRC licensees or license activities, and depending  
25 upon the results of its evaluation, the NRC could

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1 modify, suspend or revoke NRC license--an NRC license  
2 or take other appropriate actions to resolve the  
3 problem, and that ranges all the way to, you know,  
4 doing nothing if that's the appropriate action, or for  
5 instance, if the activity that we were petitioned  
6 about was not within our license jurisdiction. Our  
7 guidance on dispositioning 2.206 petitions can be  
8 found in Management Directive 8.11, that's an internal  
9 NRC document, but I think--which it is publicly  
10 available.

11           Again, Lisa went over the purposes of  
12 today's meeting; I won't go back through those. There  
13 will be--this is a meeting to--this is an opportunity  
14 for the petitioner to meet and make statements to the  
15 Petition Review Board, but I would emphasize that  
16 there will no decisions made at this meeting.  
17 Following the meeting, we'll conduct our internal  
18 deliberations, and the outcome of the internal meeting  
19 will be discussed with the petitioner, then ultimately  
20 there will be a formal decision rendered in this  
21 matter. Again, I would just say that I am the  
22 Petition Review Board chairman, Lisa is the petition  
23 manager, and as Joe stated, he is our--the Petition  
24 Review Board coordinator for our office and FSME, and  
25 Kerstun Day is on the Petition Review Board

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1 representing the Office of Enforcement.

2           Additionally, we do have a member of the  
3 Office of General Counsel who provides advice to the  
4 Board, and that attorney is Molly Barkman Marsh. I  
5 guess I'll turn it over to Lisa to briefly describe  
6 how we got where we are for the petition under  
7 consideration. And so with that, Lisa, I'll turn it  
8 back over to you.

9           MS. DIMMICK: Okay. The scope of the  
10 petition under consideration is that on November 27,  
11 2010, Mr. Saporito submitted to the NRC a petition  
12 under 2.206 regarding the operation and manufacture of  
13 commercial x-ray back scanners used in airports and  
14 facilities throughout the United States of America.  
15 In this petition request, Mr. Saporito identified  
16 areas of concern, and Mr. Saporito requested that the  
17 NRC number one, take escalated enforcement against the  
18 licensee or revoke the NRC license granted to the  
19 licensee for the operation and manufacture of x-ray  
20 back scanners; two, issue a Notice of Violation with a  
21 proposed civil penalty against the licensee; and  
22 three, require the licensee to determine and document  
23 the effects of x-ray back scanner equipment radiation  
24 emission. And there were several areas of  
25 consideration for the radiation effects.

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1           As the basis for this request, Mr.  
2 Saporito cites the concerns of several scientists from  
3 the University of California - San Francisco, who had  
4 previously authored a letter to Dr. John P. Holdren,  
5 who is the Assistant to the President for Science and  
6 Technology. The activities to date concerning this  
7 petition, on December 8, 2010, the petitioner  
8 requested to engage the Petition Review Board  
9 following receipt of an electronic mail correspondence  
10 from the NRC. The e-mail dated December 8, 2010  
11 acknowledged receipt of the petition, and explained  
12 the staff reviewed the submittal, and had determined  
13 that the petition did not meet the criteria for  
14 consideration under the 2.206 process because the NRC  
15 does not have jurisdiction over radiation emitting  
16 electronic products.

17           The e-mail went on to explain the NRC  
18 regulates nuclear materials and not all sources of  
19 radiation, and that although the licensee, AutoClear  
20 Scintrex Trace Corporation and Control Screening held  
21 a materials license issued by the NRC, possession and  
22 use of radiation-emitting electronic products are not  
23 authorized by way of a materials license. In  
24 addition, the NRC license was transferred to New  
25 Jersey in 2009. The U.S. Food and Drug

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1 Administration's Center for Devices and Radiological  
2 Health, CDRH, is responsible for regulation radiation-  
3 emitting electronic products. CDRH regulates the  
4 manufacture of products; the states regulate the use  
5 of radiation-emitting electronic products. So that  
6 was the--to recap the e-mail correspondence provided  
7 on December 8.

8 So at this time, that's what we've done to  
9 date, and so Mr. Saporito, you have an opportunity to  
10 provide additional information in support of your  
11 petition, or to be considered for this position.

12 MR. LUEHMAN: Before we get to Mr.  
13 Saporito, Lisa, there is just one point I want to make  
14 in the summary of the e-mail. It states that, you  
15 know, the e-mail that you said, all the facts, it says  
16 that the Food and Drug Administration regulates the  
17 radiation-emitting products, CDRH regulates the  
18 manufacture of the products; the state regulates the  
19 use of those emitting products, that--but I would have  
20 to put a qualification on that. They regulate those  
21 and may even license them depending upon the state in  
22 areas where they have jurisdiction. For federal  
23 entities using those types of products, the states  
24 would not regulate federal entities that use them, and  
25 I think that TSA would come under that--

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1 MS. DIMMICK: Okay.

2 MR. LUEHMAN: --you know, that heading.  
3 But with that, that's it. I mean that's--Mr.  
4 Saporito?

5 MR. SAPORITO: Yes, for the record, my  
6 name is Thomas Saporito, I'm the petitioner in this  
7 matter, and I reside in the town of Jupiter, the State  
8 of Florida. First of all, my statements made here  
9 today are to be considered a supplement to my November  
10 27, 2010 petition, and to the extent there appears to  
11 be a jurisdictional issue here at the NRC, I request  
12 that a copy of this transcript be provided to the NRC  
13 Office of the Inspector General for further review.

14 Now with respect to jurisdiction, I take  
15 exception to the NRC's position that they don't have  
16 jurisdiction in this matter. Clearly, under 10 CFR  
17 Parts 19, 20, 21, 30, 32.26, 32.27, 32.28, 32.29 and  
18 under other NRC regulations and authority, the NRC is  
19 the government agency charged with the protection of  
20 public health and safety with respect to radioactive  
21 sources for which the public may be subjected to those  
22 emissions. The NRC's authority and jurisdiction in  
23 this matter is no different from the agency's  
24 jurisdiction and authority in a regulations nuclear  
25 power reactors across the United States of America.

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1 To the extent that the NRC as a government agency in  
2 fact issued a license to one or more of the licensees  
3 identified in the petition, and to one or more other  
4 licensees with respect to a request for a license for  
5 these x-ray back scanner equipment, whether it be this  
6 licensee or other licensees, the NRC clearly had  
7 jurisdiction; otherwise the agency wouldn't have  
8 issued the license to begin with. So to the extent  
9 that the agency, being the NRC, had jurisdiction and  
10 has jurisdiction to issue such malpermissive licenses  
11 with respect to x-ray back scanner equipment, the NRC  
12 certainly has jurisdiction to entertain the petition  
13 that I filed on November 27, 2010, as supplemented on  
14 this date.

15 To the extent that the public, the general  
16 public is being subject to radioactive emissions from  
17 a radioactive source that is being controlled and  
18 operated by a licensee of the NRC, the NRC has  
19 jurisdiction to consider the petition dated November  
20 27, 2010. We have a most serious matter here where  
21 the government agency, being the NRC, in fact issued  
22 one or more licenses to one or more licensees which  
23 respect to these x-ray back scanner devices that are  
24 used in airports across the United States. Children  
25 of all ages, women, and pregnant women, and males of

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1 all ages are being subject to radioactive emissions  
2 from a radioactive sources that was licensed by the  
3 NRC, and the licensees are not being held accountable  
4 and regulated to ensure that the public health and  
5 safety is protected from over-exposure of radiation  
6 from these devices that the NRC has licensed for  
7 operation in the United States.

8 Furthermore, the NRC has failed to ensure  
9 public health and safety by adequately protecting  
10 public health by controlling the emissions from these  
11 devices through procedures, or some type of technical  
12 specifications to ensure that the licensees who  
13 operate these devices and subject the public, the  
14 general public, to these radioactive emissions,  
15 operate the equipment in such a manner as to prevent  
16 an over-exposure to any individual, be it a child, a  
17 pregnant woman, a woman or a male, when they are being  
18 scanned at airports. Furthermore, the NRC is failing,  
19 as a government agency, to protect public health and  
20 safety with respect to pilots and other employees of  
21 airlines who are frequent--or frequently scanned by  
22 these radioactive sources because of their job  
23 function in piloting aircraft or serving other  
24 purposes on an aircraft, so they're being scanned more  
25 frequently than the general public are being scanned;

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1 therefore, they're receiving a higher dose than the  
2 general public. And that's something the NRC should  
3 be regulating and insuring to protect public health  
4 and safety in some form, fashion or manner, either  
5 through procedures or product of the license or  
6 whatever.

7 In addition to that, the NRC is failing to  
8 protect public health and safety by not ensuring or  
9 providing assurance--having the licensee provide  
10 assurance to the NRC that there are protective  
11 measures should the scanning equipment malfunction  
12 mechanically where it would cause an overdose of  
13 radioactive exposure to any member of the public who  
14 is being scanned. There's no protections in place  
15 there. There's no protections in place by these  
16 licensees to ensure that the operator doesn't  
17 arbitrarily increase the power to the equipment, which  
18 would increase the dose emitted from the source, and  
19 over-expose an individual because they want to have an  
20 enhanced image of a particular individual going  
21 through that machine.

22 So these controls are not present, and the  
23 NRC is just arbitrarily issuing these licenses to  
24 operate these radioactive sources throughout the  
25 United States, and jeopardizing public health and

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1 safety by doing so. Now, to the extent the agency  
2 says they don't have jurisdiction, that's totally a  
3 frivolous argument because clearly, the agency has  
4 jurisdiction and authority to issue licenses for use  
5 of these radioactive sources; therefore, the agency  
6 inherently has subjected itself to jurisdiction in  
7 this matter as a matter of law. You cannot--an agency  
8 cannot issue a license and then arbitrarily say well,  
9 you know, we really have no jurisdiction. Well, how  
10 did you issue the license to begin with if you had no  
11 jurisdiction over these devices? That's comparable to  
12 the Atomic Safety & Licensing Board, the NRC issuing a  
13 license for a, you know, or issuing an order in a  
14 licensing proceeding, and then coming back several  
15 months later and revoking that order, and the licensee  
16 saying well you don't really have authority to do that  
17 because you don't have authority in this matter. It's  
18 a ludicrous argument.

19 And that's why the NRC Inspector General  
20 needs involvement in this matter, because the NRC  
21 obviously is placing public health and safety in grave  
22 jeopardy here by misconstruing its own authority,  
23 misconstruing its own duty to protect public health  
24 and safety in these circumstances, and the Inspector  
25 General needs to conduct an investigation to find out

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1 why the agency doesn't understand its own regulations.

2 So it's just--this is nothing more, nothing less than  
3 the--an NRC--a government agency allowing, by saying  
4 they don't have jurisdiction and authority in this  
5 matter, they're just arbitrarily allowing the  
6 uncontrolled use of radioactive sources throughout the  
7 United States of America, and subjecting the public to  
8 receiving a radioactive emission in an uncontrolled  
9 manner, an unmonitored manner, by a licensee who's not  
10 held accountable in any way, shape or manner by the  
11 NRC, who issued the licenses to these licensees to  
12 begin with. It's just an unbelievable situation, and  
13 it needs to be rooted out by the Office of the  
14 Inspector General so that we can get to the bottom of  
15 this.

16 And at that, that's all I have to say on  
17 the matter, because there's no sense getting into the  
18 subject and the meat of the petition if the NRC's not  
19 even going to admit that they have jurisdiction to  
20 begin with. So once we get this jurisdiction issue  
21 put to bed, then we'll have to revisit the petition,  
22 and if there's any questions I'll be happy to answer  
23 them.

24 MR. LUEHMAN: Thank you, Mr. Saporito,  
25 this is Jim Luehman again. I guess my--the one

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1 question I do have is you referred in your statement  
2 in a number of occasions to the licenses that the NRC  
3 has issued to operate these devices. Do you have any  
4 more specific information on what licenses you're  
5 referring to?

6 MR. SAPORITO: Well, there's a license  
7 identified in the petition itself, it's 29-31303.01.  
8 It's not necessarily a license to operate per se, I  
9 mean, it certainly incorporates a license to operate,  
10 but it's my understanding and belief that the NRC  
11 would be issuing licenses for the actual possession,  
12 use and control of a radioactive source in this  
13 equipment, not necessarily per se only the fact that  
14 it's operating such equipment. To the extent that the  
15 NRC is issuing these licenses, in my view would  
16 certainly encompass the parameter's of the licensee's  
17 control, monitoring and use of that source, and in its  
18 emission of radioactive particles and emissions which  
19 are received by members of the public.

20 MR. LUEHMAN: Okay. Thank you. Any other  
21 questions? Kerstun, do you have any questions?

22 MS. DAY: No, I don't have any questions.

23 MR. LUEHMAN: Lisa?

24 MS. DIMMICK: No, I don't have any  
25 questions.

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1 MR. LUEHMAN: Okay, this is Jim Luehman  
2 again. So before I conclude this meeting, there is an  
3 opportunity--we've heard from Mr. Saporito, and we've  
4 --the Petition Review Board has asked the one question  
5 that we had that we wanted to get some clarification  
6 on, and before I conclude the meeting, we do have  
7 members of the public, or a member of the public on  
8 the phone, and I wanted to provide them an opportunity  
9 to provide any comments, and I include in members of  
10 the public in this case, the company that manufactures  
11 the devices, I'm using that term member of the public  
12 broadly, and so I guess I would ask are there any  
13 members of the public that have any--that want to make  
14 any comments before we conclude this call?

15 (No response)

16 MR. LUEHMAN: Okay, I guess I'll take that  
17 as a, that there are no comments. Mr. Saporito, we'd  
18 like to thank you for taking the time to provide the  
19 NRC staff with some additional clarifying information  
20 on the petition you've submitted, and as I stated  
21 earlier, this meeting is not to make decisions, but to  
22 gather information. We think we've accomplished that,  
23 and then we will be going into an internal  
24 deliberation and ultimately there will be a formal  
25 decision made on the petition. Mr. Saporito,

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1 consistent with your request, we will provide a  
2 transcript of this call, as well as our decision, to  
3 the Office of the Inspector General for whatever  
4 action they may choose to take. And with that, I  
5 would like to conclude this meeting, and thank  
6 everyone for their time. So thank you very much, and  
7 we will be terminating the phone connection, unless  
8 anybody's got any additional comment or clarifying  
9 issues.

10 (No response)

11 MR. LUEHMAN: Okay, thank you very much.

12 (Whereupon, the meeting was concluded).  
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