



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

November 12, 2013

EA-13-164

Mr. Michael McIntire, President
and Radiation Safety Officer
Southwest X-Ray Corporation
P.O. Box 130
Glenrock, WY 82637

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$7,000.00 (NRC INSPECTION REPORT NO. 030-37579/2013-001)**

Dear Mr. McIntire:

This letter provides you the NRC enforcement decision for the two apparent violations identified during the routine, unannounced inspection conducted on July 8, 2013, at your facility in Casper, Wyoming. The inspection examined activities conducted under your license as they relate to public health and safety, compliance with the Commission's rules and regulations, and with the conditions in your license. During the inspection, two apparent violations were identified that involved: (1) the failure to conduct radiographic operations with the radiographer accompanied by another qualified radiographer or qualified radiographer's assistant; and (2) failure to ensure a radiographer's assistant was under the personal supervision of a radiographer while using radiographic exposure devices. These apparent violations were first discussed with you on July 8, 2013, at the conclusion of the onsite portion of the inspection, as preliminary findings. After the NRC's in-office reviews, which included consultations with the NRC's Office of Enforcement and the Office of Federal and State Materials and Environmental Management programs, Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, conducted a telephonic exit briefing with you on August 14, 2013.

During the August 14 exit briefing, Mr. Vasquez informed you that the NRC was considering escalated enforcement action for the two apparent violations. Mr. Vasquez also informed you that before making a final enforcement decision, the NRC was offering Southwest X-Ray Corporation the option of discussing the apparent violations and corrective actions during a Predecisional Enforcement Conference or by conducting a mediation session with the NRC under the NRC's Alternative Dispute Resolution (ADR) program. You informed Mr. Vasquez on August 16, 2013, that you decided to meet with the NRC in a predecisional enforcement conference.

The apparent violations were described in detail in the NRC inspection report dated August 20, 2013 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML13233A167), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

On September 12, 2013, a predecisional enforcement conference was conducted in the Region IV office in Arlington, Texas, with you to discuss the apparent violations, their significance, their root causes, and your corrective actions. During the conference, you stated that you accepted responsibility for the failure to supervise the radiographer's assistant as required by 10 CFR 34.46(c) because you could not supervise the assistant from the office area. However, you objected to the apparent violation of the two-person rule [10 CFR 34.41(a)] and stated that from the office area you could hear everything going on in the warehouse even though you could not see what was occurring in the shop area where the radiographer's assistant had continued performing radiography by himself. You also provided the same information regarding the causes and corrective actions that you described in your July 30, 2013, letter (ADAMS Accession ML13231A028). NRC staff asked if you had considered other corrective actions such as additional training on the regulations, procedures, and more formalized communications (e.g., 3-part communications). Because there were many topics discussed during the conference, you agreed to send a letter clearly documenting your corrective actions. Your corrective actions were documented by letter dated September 20, 2013 (ADAMS Accession ML13301A759).

After reviewing the information you provided at the conference and in your letters dated July 30 and September 20, 2013, the NRC has determined that two violations of NRC requirements occurred. These 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 were observed by our inspector during an unannounced onsite inspection. The violations were caused by a lack of communication between the radiographer and the radiographer's assistant when the radiographer left the shop to answer a telephone call. The radiographer's assistant stated he thought the radiographer was still in the area, and the radiographer stated he thought the assistant knew he had left the area.

The significance that the NRC places on these regulations is directly related to the potential consequence of unnecessary radiation exposure to workers or members of the public. NRC's basis for issuing its regulations at 10 CFR 34.41(a) and 10 CFR 34.46(c) was to significantly increase the assurance that operational safety measures and emergency procedures would be effectively implemented. "Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the presence of a second individual could be an important factor in preventing unnecessary radiation exposures." 62 Fed. Reg. 28948-28949. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$ 7,000 is considered for a Severity Level III problem.

Because your facility has not been the subject of escalated enforcement actions within the last 2 years or last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Based on the information discussed at the September 12, 2013, predecisional enforcement conference, as well as the corrective actions you described in your letters dated July 30 and September 20, 2013, the NRC has determined that corrective action

credit is not warranted. Your July 30 and September 20, 2013, letters described your corrective actions as: (1) discussing the apparent violations with your radiographer's assistant and, (2) placing a copy of the apparent violations in Southwest X-Ray's Operations and Emergency Manual. You also stated you will work in a safe and conscientious manner. However, during the September 12th conference, Southwest X-Ray did not demonstrate a complete knowledge of the requirements described in 10 CFR 34.41(a), also known as the "two person rule," by failing to recognize that the rule required the second person to observe the operations. Because your corrective actions did not include training for the Southwest X-Ray radiographer and assistant, training of new employees on the regulations, and a commitment to correct the lack of communication between the radiographer and radiographer's assistant (and vice versa), the NRC has determined that your corrective actions were not sufficiently comprehensive to date to reasonably preclude the violations from recurring.

Therefore, to emphasize the importance of compliance and encourage prompt and comprehensive correction of 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 (Notice) in the base amount of \$7,000 for the Severity Level III problem. In addition, issuance of this Severity Level III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice, including corrective actions that you will implement. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Alternatively, you may request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a third-party neutral. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at the following website: <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. 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. In addition, please contact Mr. Michael Vasquez at 817-200-1130 to inform him of your decision at the same time.

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 in the NRC's Agencywide Documents Access and Management 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 (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Steven A. Reynolds
Deputy Regional Administrator

Docket: 030-37579
License: 49-29277-01

Enclosure:
Notice of Violation

cc w/Enclosure:
Mr. Scott W. Ramsay
Radiological Services Supervisor
Wyoming Office of Homeland Security
5500 Bishop Blvd.
Door #1
Cheyenne, WY 82009

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Michele.Burgess@nrc.gov ;	Robert.Sun@nrc.gov ;	Jenny.Murray@nrc.gov ;
Donna.Austin@nrc.gov ;		
Daniel.Rich@nrc.gov		

Hard copy:
RIV Materials Docket File

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<input checked="" type="checkbox"/> Publicly Available	<input type="checkbox"/> Non-publicly Available	<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive	
Category:	KEYWORD: NOV EA-13-164 Southwest X-Ray			
SES:ACES	C:NMSBA	RC	ACES	
RSBrowder	MVasquez	KSFuller	HGepford	
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AVegel	CHair	NHilton	SReynolds	
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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Southwest X-Ray Corporation
Glenrock, WY

Docket No. 030-37579
License No. 49-29277-01
EA-13-164

During an NRC inspection conducted on July 8, 2013, at your facility in Casper, Wyoming, 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:

- A. 10 CFR 34.41(a) requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has met the requirements of §34.43(c). The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

Contrary to the above, on July 8, 2013, the licensee failed to ensure that radiography was performed with at least one other qualified radiographer or an individual who has met the requirements of §34.43(c). Specifically, radiography was conducted by the radiographer's assistant while the radiographer was in the office area of the facility, where he (the radiographer) was not able to observe operations.

- B. 10 CFR 34.46(c) requires, in part, that whenever a radiographer's assistant uses radiographic exposure devices, associated equipment, or sealed sources or conducts radiation surveys required by §34.49(b), the assistant shall be under the personal supervision of a radiographer. The personal supervision must include the radiographer's direct observation of the assistant's performance of the operations referred to in this section.

Contrary to the above, on July 8, 2013, the licensee failed to ensure that the radiographer's assistant was under the personal supervision of a radiographer while using radiographic exposure devices. Specifically, the radiographer was in the office area of the facility and did not observe the assistant's performance of radiographic operations.

This is a Severity Level III problem (Section 6.3.c)
Civil Penalty - \$ 7,000.00. (EA-13-164)

Pursuant to the provisions of 10 CFR 2.201, Southwest X-Ray Corporation is hereby required to submit a written statement or explanation to: Mr. Roy P. Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 Lamar Blvd., Arlington, TX 76011, and Document Control Desk, Washington, DC 20555-0001, 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 a "Reply to a Notice of Violation; (EA-13-164)" and should include for each alleged violation: (1) the reason for the violation or, if contested, the basis for disputing the violation or

Enclosure

severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) 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, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, 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, within 30 days of the date of this Notice. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. 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 violation(s) 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 response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided 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 which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Mr. Roy P. Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to: Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 Lamar Blvd., Arlington, TX 76011, and Document Control Center, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you are required to post this Notice within 2 working days of receipt.

Dated this 12th day of November 2013