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DOCKET NUMBER
PROB. & UTIL. FAC.

15000033-SC/CIVP



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

DOCKETED
USNRC

OFFICE OF THE
SECRETARY

JAN 16 1990

'90 JAN 16 P2:07

MEMORANDUM FOR: B. Paul Cotter, Jr.
 Chief Administrative Judge
 Atomic Safety and Licensing Board Panel

FROM: Samuel J. Chilk, Secretary

SUBJECT: REQUEST FOR HEARING BY BASIN TESTING
 LABORATORY

Attached is a response and request for a hearing filed on behalf of Basin Testing Laboratory, Inc. including related documentation. The hearing request is filed in response to a December 6, 1989 "Order To Show Cause Why License Should Not Be Suspended," published in the Federal Register at 54 FR 51272 (December 13, 1989).

The hearing request is being referred to you for appropriate action in accordance with 10 C.F.R. 2.772(j).

cc: Commission Legal Assistants
 OGC
 EDO
 Robert W. Harms, Esquire
 Counsel for Basin Testing Laboratory
 ASLAP
 NMSS

9001250127 900116
 NMSS LIC30 PDR

DS02

HARMS LAW OFFICES, LTD.

ATTORNEYS AT LAW

801 EAST BROADWAY SUITE 100
THE EXECUTIVE BUILDING
P.O. BOX 1192
WILLISTON, ND 58802-1192
(701) 572-8146
TIOGA OFFICE
6 ND MAIN ST
TIOGA, ND 58852
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DOCKETED
USNRC

ROBERT W HARMS
RODNEY J EBERTOWSKI

'90 JAN 16 P1:18

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

December 29, 1989

Director
Office of Enforcement
U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

REQUEST FOR AN ENFORCEMENT HEARING

RE: Document No. 15000033 General Licensee (10CFR150.20)
EA88-265
Basin Testing Laboratory, Inc., dba Basin Services, Inc.
P.O. Box 15854
Williston, ND 58802

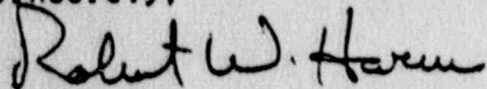
SUBJECT: Order Imposing Civil Monetary Penalty and Order
to Show Cause Why License Should Not Be Suspended
Dated - December 6, 1989

Gentlemen:

Our office represents the above named licensee, and we are hereby requesting an enforcement hearing on the commission's order imposing civil penalty and order to show cause why the license should not be suspended, which was dated December 6, 1989.

Thank you for your consideration.

Sincerely,



ROBERT W. HARMS
Harms Law Offices, Ltd.

RWH:ch

cc: Assistant General Counsel for Hearings and Enforcement
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C.
Regional Administrator
U.S. Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Ste. 1000
Arlington, TX 76011

9001080122

2pp

AFFIDAVIT OF MAILING

RE: Document No. 15000033 General Licensee (10CFR150.20)
EA86-265
Basin Testing Laboratory, Inc., dba Basin Services, Inc.
P.O. Box 15854
Williston, ND 58802

Celeste Hove being first duly sworn, deposes and says that on the 29th day of December, 1989, she served the request for enforcement hearing on the commission's order imposing civil penalty and order to show cause why license should not be suspended upon the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Assistant General Counsel for Hearings and Enforcement, and U.S. Nuclear Regulatory Commission and Regional Administrator, U.S. Nuclear Regulatory Commission by placing a true and correct copy thereof in an envelope addressed as follows:

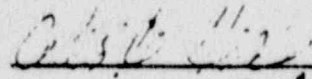
Director,
Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555


Assistant General Counsel for Hearings and Enforcement
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
U.S. Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Ste. 1000
Arlington, TX 76011

and depositing the same, with postage prepaid, in the United States mails at Williston, North Dakota.

Subscribed and sworn to before me this 29th day of December, 1989.





Notary Public

My Commission Expires: 9/11/93

HARMS LAW OFFICES, LTD.

ATTORNEYS AT LAW

501 EAST BROADWAY SUITE 100
THE EXECUTIVE BUILDING
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17011 972 8148
TIOGA OFFICE
8 ND MAIN ST
TIOGA ND 58652
17011 864 2829

ROBERT W HARMS
RODNEY J EBERTOWSKI

December 29, 1989

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

RE: Document No. 15000033 General Licensee (10CFR150.20)
EA88-265
Basin Testing Laboratory Inc., dba Basin Services, Inc.
P.O. Box 1854
Williston, ND 58602

ATTN: Hugh L. Thompson, Jr.

Gentlemen:

This is our response to the NRC's order imposing civil penalty and order to show cause, dated December 6, 1989, regarding the above named licensee. Mr. Jim Leiberman (301)492-0741 was kind enough to grant us until today to respond to the orders. Also enclosed is Basin's request for a hearing.

I would also like to add an additional response to the second to last paragraph on page five of the appendix as to evaluations and conclusions attached to the order imposing civil monetary penalty. Basin does not appear to have had a radiographer assistant conducting radiographic processes, nor does it appear to have failed to supervise radiographer assistants as alleged previously. The enclosures indicate that Mr. Paul Schoedel, the person referred to in the violations alleged to have occurred in November, 1987, was in fact a radiographer as the enclosures will demonstrate.

As you pointed out in the accompanying letter with the orders, Basin did not intend to mislead NRC in its response of February 22, 1989. Specifically, Basin acknowledges that it was notified by the North Dakota State Department of Health by letter dated July 19, 1988, that notice was required to NRC in non-agreement states such as Wyoming. That letter was in fact received; however, in our response of February 22, 1989, Basin remained ignorant of the requirement for completing form 241 prior to

9001080132 2pp.

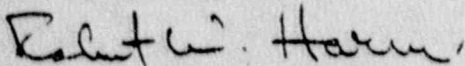
U.S. Nuclear Regulatory Commission
December 29, 1989
Page Two

conducting activities in non-agreement states in that it overlooked the North Dakota Department of Health letter of July 19th. Our response of February 22, 1989, was certainly incorrect, but that statement was not intentionally made, nor designed to mislead NRC. Basin is a small company and is making every effort to comply with applicable regulations. It has made an incorrect statement, however, as you note, Basin has also acted to bring its activities into compliance with regulatory requirements. It is providing NRC with notice of its operations in non-agreement states. Furthermore, it has resolved its difficulties with the North Dakota State Department of Health and is having its local license renewed at the present time. We are anxious to work with NRC in getting this matter resolved, but urge you to review the decision to suspend Basin's license and impose the \$5,000 civil penalty.

Your consideration would be most appreciated.

Thank you.

Sincerely,



ROBERT W. HARMS
Harms Law Offices, Ltd.

RWH:ch
cc: Regional Administrator, Region IV

UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF)
BASIN TESTING LABORATORY, INC.)
dba BASIN SERVICES, INC.,)
WILLISTON, ND)

DOCKET NO. 15000033
GENERAL LICENSEE (10CFR150.200
EA88-265

LICENSEE'S RESPONSE TO ORDER TO SHOW CAUSE AND ORDER IMPOSING
CIVIL MONETARY PENALTY

Basin Testing Laboratory, Inc., dba Basin Services, Inc., hereby makes the following response to NRC imposing civil monetary penalty and order to show cause why license should not be suspended, dated December 6, 1989, to wit:

1. Basin's use of unqualified and unsupervised individuals to conduct industrial radiography activities as violation of 10CFR34.4:

Basin initially acknowledged that this violation occurred, however, upon closer examination Basin urges that no such violation occurred. The individual, Paul Schoedel, alleged to have been a radiographer's assistant performing functions on November 10 - 14, and November 18 and 19, 1987, at temporary job sites in Wyoming, was in fact a radiographer. (See attachment no. 1 - showing Schoedel's qualification and certification as of April 9, 1987.) The confusion surrounds the designation of level I and level II operators. Mr. Schoedel was a level I radiographer, and Basin acknowledged the violation based upon the level I designation. The North Dakota State Department of Health was interpreting level I and level II as radiographer assistants and radiographers, which Basin accepted as a proper interpretation. However, Basin has since recognized the distinction between radiographer and radiographer assistants and

that of level II and level I operators. The North Dakota Department of Health initially prepared a consent agreement based upon this alleged violation also. However, on November 30, 1989, Basin personnel met with the North Dakota Department of Health, which agreed to release any suspension period of Basin's license. (The consent agreement fined Basin which remained intact. See attachments 2 and 3.)

2. Basin's failure to have informed NRC of its work in non-agreement states from 1985 - 1988, a violation of 10CFR150.20:

Basin has responded to this violation previously. As we indicated previously, Basin believed (incorrectly) that it had properly complied with regulations for performing operations within the State of Wyoming. Basin is not aware of any statement in Wyoming regulations indicating requirements for notifying NRC via form 241. However, Wyoming has since changed its procedures now clearly indicating that NRC form 241 is required. (See attachment no. 4.) However, Basin does acknowledge that it was notified by letter dated July 19, 1988, from the North Dakota State Department of Health that NRC should be notified when performing licensed activities in Wyoming. (See attachment no. 5). Basin had already been in Wyoming with the belief it had properly complied.

3. Information provided by Basin "was not complete and accurate in all material respects in that radiography work had been conducted on September 12, 1988, in Montana, rather than in North Dakota:

Basin has previously responded to this violation and

believes that it has implemented procedures to eliminate confusion in remote areas in bordering states in the future.

4. Basin's request for further consideration for mitigation:

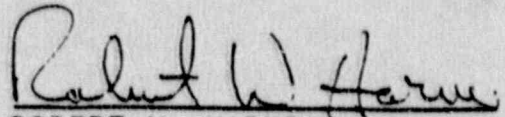
1. Basin reasserts that its violations were unintentional, particularly with regard to notice of radiographic operations in other states. Basin did become aware of the requirement for notifying NRC when conducting operations in non-agreement states by letter dated July 19, 1988. At that time, Basin was already in Wyoming and believed that it had complied with all notice requirements. You will note that paragraph IV, page two, of the North Dakota State Department of Health letter of July 19, 1988 (attachment no. 5), does not specify the requirement of a 241 filing. Quite frankly, Basin received the letter and quite simply forgot the letter in preparing its responses to NRC.

2. The penalty of \$5,000 and a suspension of Basin's license would put the licensee out of business, or clearly affect Basin's ability to safely conduct licensed activities. Specifically, Basin is presently operating in an area of economic decline and has experienced a huge drop in its revenues in the past. Basin does not have the resources to pay a \$5,000 fine without liquidation of equipment. Furthermore, suspension of Basin's license will clearly put Basin out of business. (See attachment no. 6).

Wherefore, Basin respectfully requests that the civil

penalty waived or otherwise mitigated and that its license not be suspended.

Dated this 29th day of December, 1989.

A handwritten signature in cursive script, reading "Robert W. Harms". The signature is written in dark ink on a light-colored background.

ROBERT W. HARMS
Harms Law Offices, Ltd.
510 E. Broadway, Ste. 100
P.O. Box 1192
Williston, ND 58802

PERSONNEL QUALIFICATIONS

NAME: Paul Schoedel

ATTACH:
NO. 1

NDT CERTIFICATIONS

Certifications				Exam Scores				Trng Hrs	Recertification/Restriction
Method	Level	Date	Examiner (RSO)	Gen	Spec	Prac	Comp		
RT	II	4/26/88	Jerry Thompson	90	92	90	91	40	

EXPERIENCE

From	To	Company	NDT Methods and Highest Level Attained
3/1/87	Present	Basin Testing Laboratory, Inc.	RT II

EYE EXAMINATIONS

Date	Examined By

EDUCATION AND TRAINING (Highest Public, Advanced and NDT)

School	Location	Date	Length	Subject
HQS	Chicago, IL	2/87	40 Hrs	RT I

COMMENTS:

In accordance with the Basin Testing Laboratory, Inc. Procedures and the 1984 Edition of SNT-TC-1A, "All historical information supplied by me to compile this certification is true and correct to the best of my knowledge."

Paul Schoedel
EXAMINER

4-27-88
DATE

MQS

Training Group

This is to certify that PAUL SCHOEDEL

has completed a 40 hour, level I formal training course in

Fundamentals of Radiography

Date: FEBRUARY 13TH, 1987. Course content fulfills the formal

training recommendations outlined in SNT-TC-1A and MIL-STD-410.

Throughout the laboratory segment of this program each student performed comprehensive applications utilizing portable radiographic equipment, industrial quality films and manual chemical processing techniques. Test components furnished to the student included various castings, welds, and forgings. The participation and performance of each student has been witnessed and evaluated. The final course grade is recorded below:

Written Examination


54%

Application of Course Concepts

Satisfactory ✓

Unsatisfactory

Minimum passing score 70%


J. D. Willenberg
Director of Training

MOS

Training Group

This is to certify that PAUL SCHOEDEL

has completed a 40 hour, level I formal training course in

Fundamentals of Radiography

Date: APRIL 9TH, 1987. Course content fulfills the formal

training recommendations outlined in SNT-TC-1A and MIL-STD-410.

Throughout the laboratory segment of this program each student performed comprehensive applications utilizing portable radiographic equipment, industrial quality films and manual chemical processing techniques. Test components furnished to the student included various castings, welds, and forgings. The participation and performance of each student has been witnessed and evaluated. The final course grade is recorded below:

Written Examination

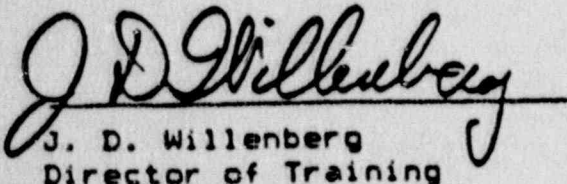
90.0

Application of Course Concepts

Satisfactory X

Unsatisfactory

Minimum passing score 70%


J. D. Willenberg
Director of Training

WRITTEN EXAMINATION FOR QUALIFYING RADIOGRAPHIC PERSONNEL
(to use hv-product materials)

NAME Paul Schedel BADGE NO. _____ TESTING DATE 3-2-4

EXAMINER Ken King GRADE 100%

INSTRUCTIONS:

1. The following one hundred and twenty five (125) questions are sub-divided into five groups of twenty five (25) questions each. The groups represent specific areas of required instruction.
2. Questions for Radiographers: The underlined questions are mandatory plus at least eight additional questions from each group (50 questions minimum).
3. Questions for Assistant Radiographers/Trainees: All questions marked by an asterick (*) are mandatory (25 questions).
4. The time limit for testing is two hours.
5. Each question shall be given equal weight in grading and a score of 75% or better is required to pass.
6. The examiner must review and discuss each incorrectly answered question with the student.

GROUP A - FUNDAMENTALS OF RADIATION SAFETY AND CHARACTERISTICS OF GAMMA RADIATION

1. ✓ What three principles must be applied for controlling exposure to radiation? Time Distance Shielding
2. ✓ Would a single exposure of 600 r to only one hand be fatal? NO yes
Explain. hand is not a vital organ
3. ✓ What would be the probable result of a radiation exposure to the whole body of 600 r, received at a single exposure? you will probably die
4. ✓ Will radiation produce greater biological effects in minors or adults
Explain minors, These bodies are still developing

5. What is considered the maximum useful life of an isotope camera before residual radiation makes it dangerous to use? There is no residue radiation when using an isotope

6. Calibrate the dose received from a 10 curie Cobalt 60 source in ten minutes at a point two feet from the source after the radiation has passed through one HVL of lead _____

7. If the radiation intensity from a source is 10r/hr at a distance of two feet, how much would it be the following distances?
 a. four feet _____ b. twenty feet _____
 b. ten feet _____ c. one foot _____

8. 3.7×10^{10} DPS describes (choose one)
 $\frac{x}{1}$ HVL factor 1 curie 100 microcuries

9. What is meant by "half-value layer" (HVL) of an absorber for a particular kind of radiation? _____

10. What parts of the body are regarded as least sensitive to radiation exposure?
hand and forearm feet
 As most sensitive? intestinal organs

11. Which of the formulas shown below is incorrect?
 a. $\frac{1}{1} = \frac{D_2^2}{D_1^2}$ b. $1_1 : 1_2 :: D_2^2 : D_1^2$ c. $D_1^2 = \sqrt{\frac{1_2 D_2^2}{1_1}}$ d. $1_1 x D_1^2 =$

12. Does the HVL thickness of an absorber vary as the energy level of radiation varies? _____ Explain _____

13. What is the HVL thickness of lead for Iridium 192? _____

IR 192 _____ Inches CO 60 _____ Inches

14. When an isotope has gone through 3 half lives, what fraction of its initial strength is left? 1/8 of its original

X 15. What is the inverse square law relating distance from a radiation source to the intensity of radiation? $D_2 = \sqrt{D_1^2 \cdot \frac{I_1}{I_2} \cdot 1000}$

16. The roentgen is considered a rather large amount of radiation, so what subunit is used? Milli Roentgen

17. What is a radioisotope? _____

18. Define the half life of an isotope. 50 CURIES IN 75 DAY

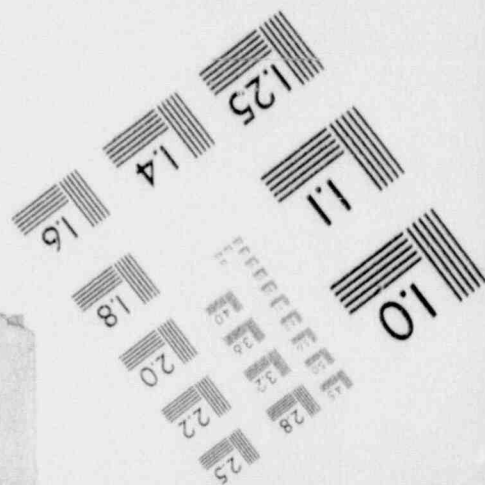
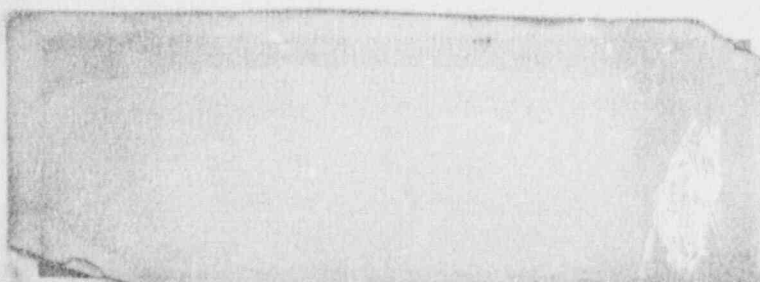
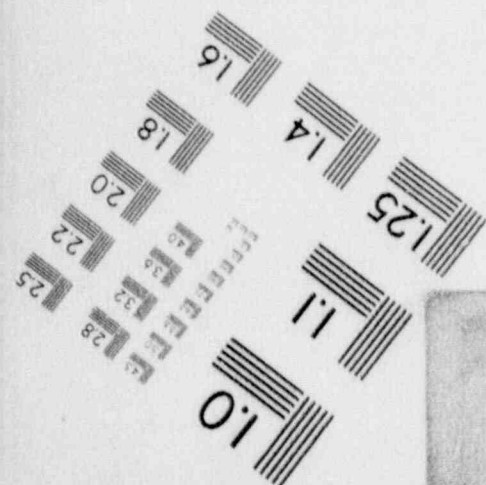
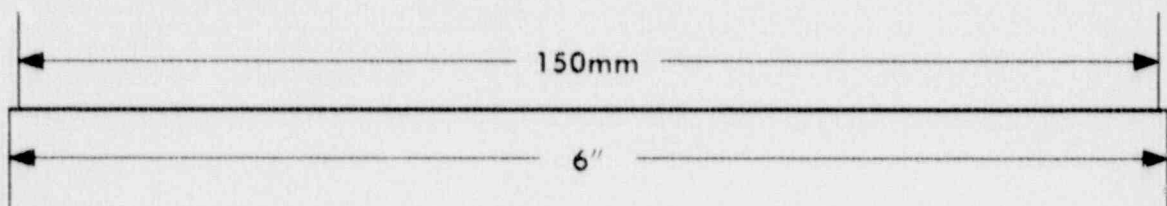
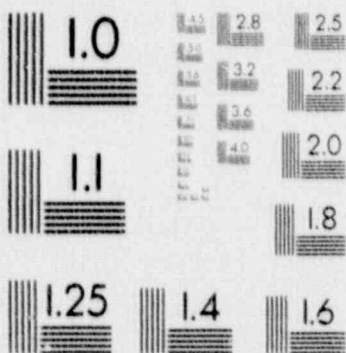
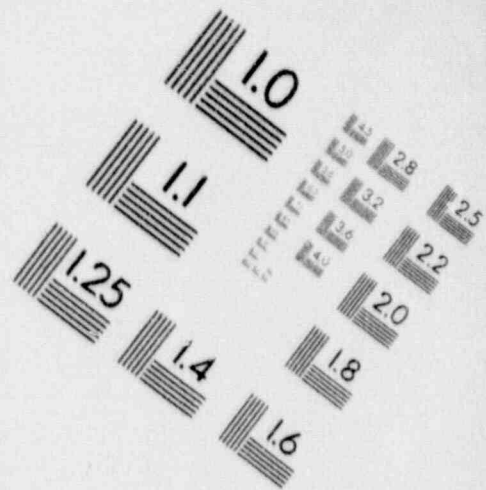
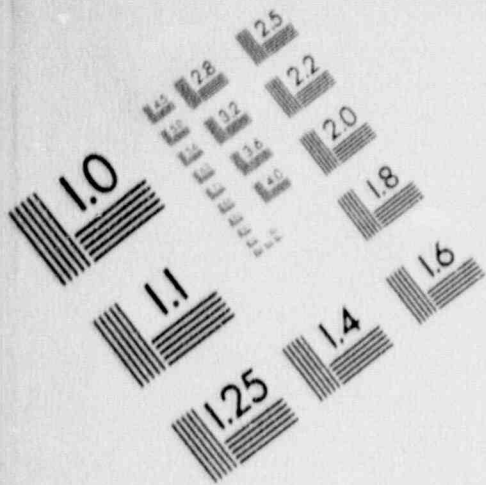
25 CURIES

19. What is the unit of measurement which expresses the number of disintegration per second which takes place in a given quantity of radioactive material and which is used as a measurement of strength of an isotope? _____

20. What is the unit of measurement for the effect of any type of radiation on man that is the equivalent to the effect of one roentgen of gamma radiation on man? _____
21. Is the decay rate of an isotope constant or does it increase or decrease with age? _____
22. What is the unit of measurement for the ionizing effect of gamma radiation on air? _____
23. What is the difference between dose rate and dose when measuring radiation?
Dose: *The quantity of radiation delivered to a specified mass or volume*
Dose Rate: *a amount of radiation in the area*
24. Is the energy level of radiation emitted by a given isotope a constant or does it decrease as the curie strength of the isotope decreases? _____
25. What is the type of radiation emitted by radioisotopes that is useful for industrial radiography? _____

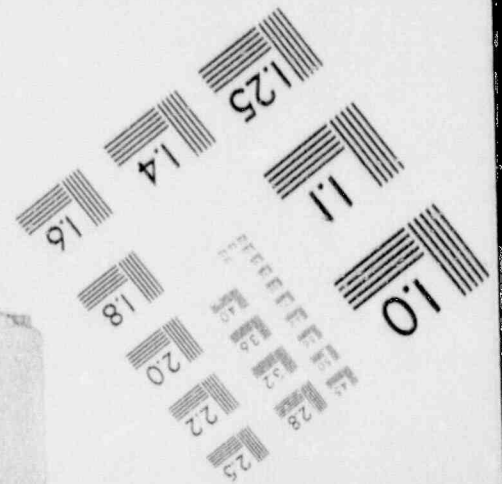
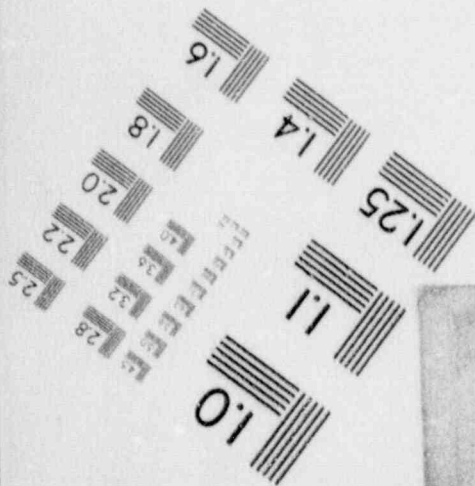
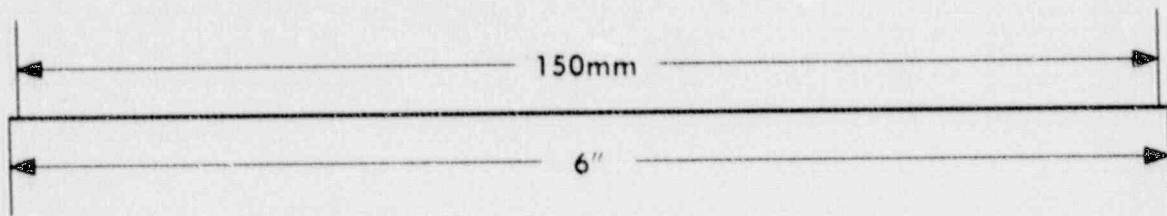
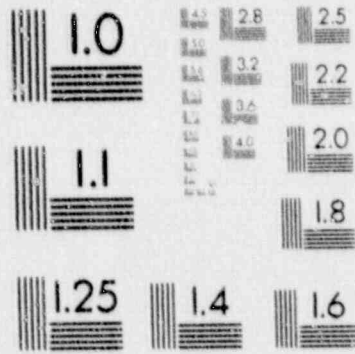
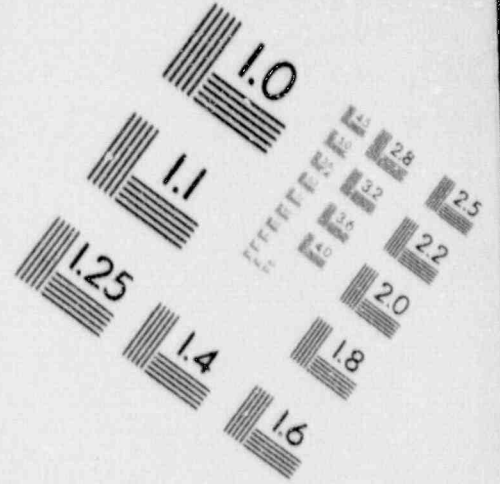
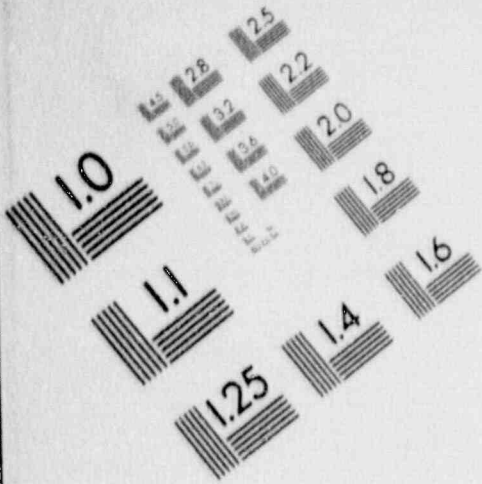
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IMAGE EVALUATION TEST TARGET (MT-3)



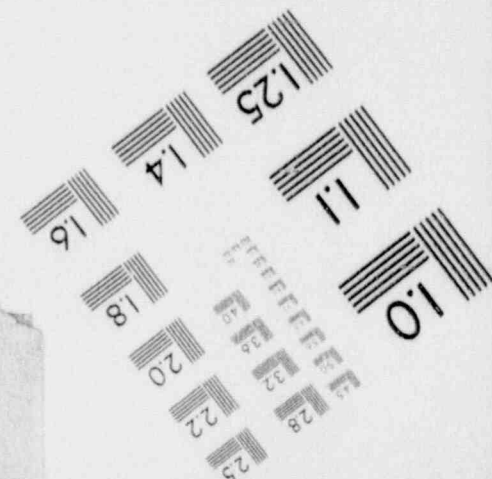
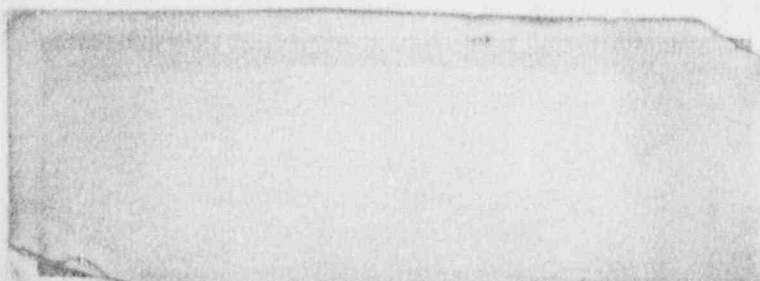
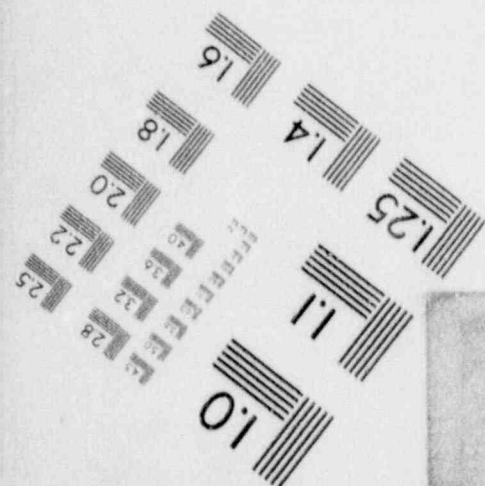
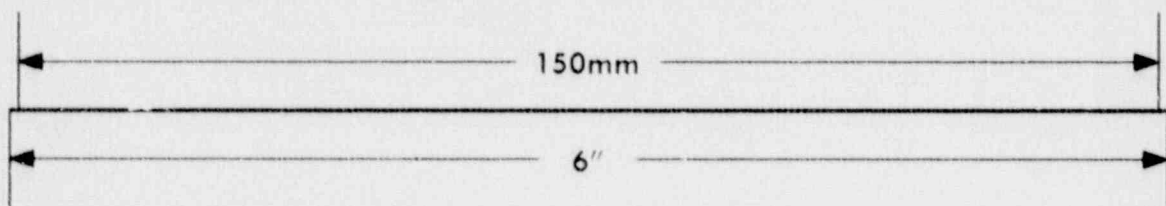
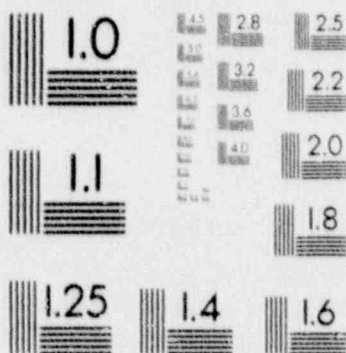
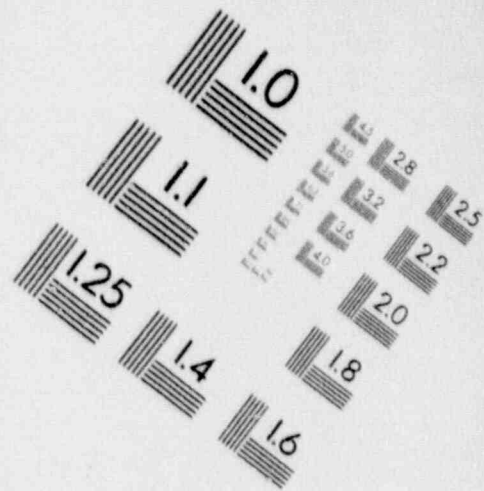
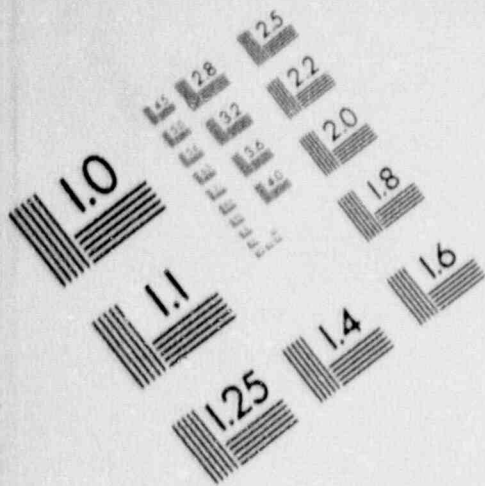
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IMAGE EVALUATION TEST TARGET (MT-3)



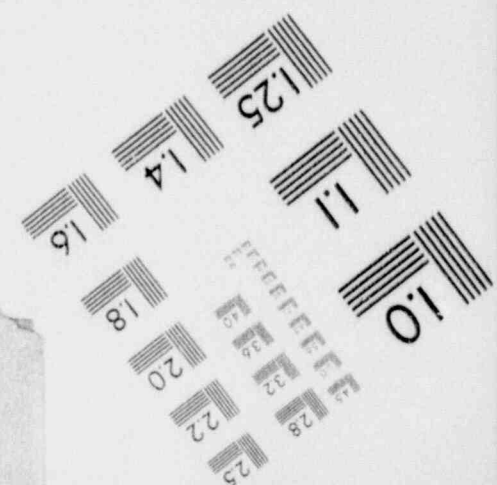
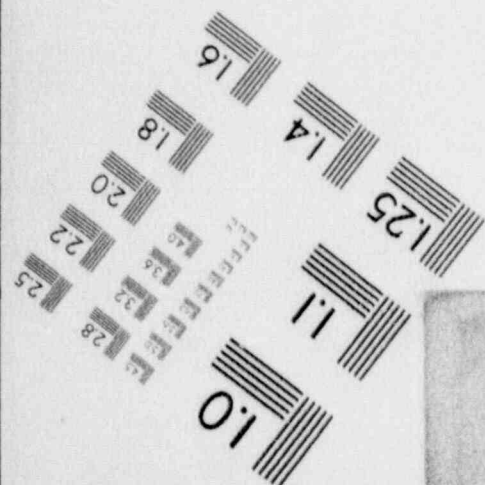
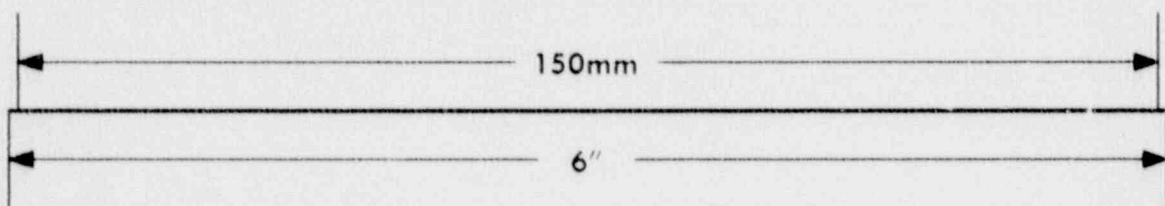
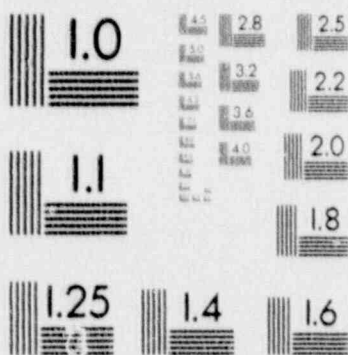
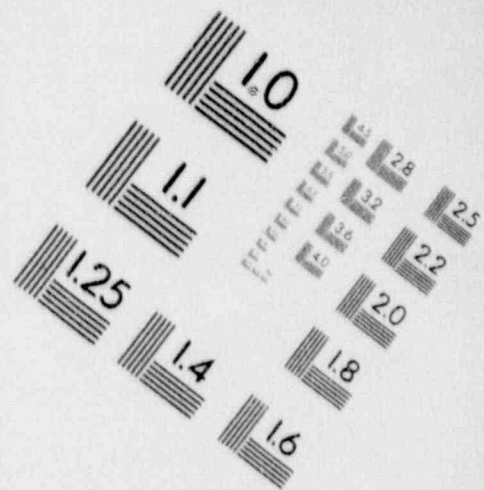
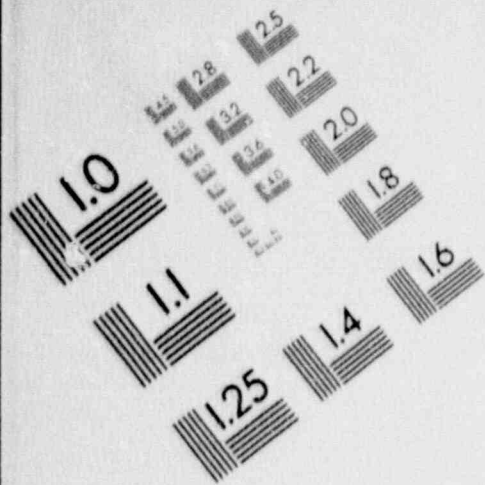
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IMAGE EVALUATION TEST TARGET (MT-3)



1

IMAGE EVALUATION TEST TARGET (MT-3)



GROUP B - RADIATION DETECTION INSTRUMENTATION

26. Can film badges be returned to any processor for developing and reading, or only to the supplier? only to the supplier
27. Will excessive heat affect the accuracy of a film badge reading? _____
Explain. _____
28. Why is it so important to survey your exposure devices after each exposure is made? To make sure the source is secure in the exposure device
29. Does a TLD measure dose or dose rate? Dose
30. Are you permitted to use a survey meter which has an altered or no calibration expiration date attached to it? NO Why? Not give you Right Reading and against the Law
31. While performing radiography, your survey meter is found to be broken or badly out of adjustment. What would you do? The radiographer shall suspend all activities using sealed sources until it is repaired with a properly calibrated and operable instrument.
32. The regulations require a radiographer to wear a 0 to 200 mR dosimeter. Does this preclude him from wearing a 0 to 5 R also? NO
33. Why are small aluminum and copper filters built into film badge holders? To determine the energy of radiation

* 41. List the radiation levels indicated on a survey meter when:

range switch set on .1, and the meter reads 6 mr/hr .6 mr/hr
range switch set on x100, and the meter reads 25 mr/hr 2500 mr/hr
range switch set on x1, and the meter reads 65 mr/hr 65 mr/hr
range switch set on x10, and the meter reads 8 mr/hr 80 mr/hr

45. When performing radiography, when must radiation surveys be made and what survey results must be recorded? _____

46. How often must dosimeters be checked for accuracy? EVERY YEAR

37. When must survey meters be calibrated? EVERY THREE MONTHS

38. What radiation exposure would be expected under the following conditions?
50 curies - Iridium 192 - 6 inches - one minute (show calculations)

$$\frac{5.9 \times 50}{40} \times 4 = 19.6 \text{ Rcm}$$

*39. Can film badges be transferred from one user to another? NO

Why? UNTRUE READING

40. Pocket dosimeters are designed to measure:

- a. gamma rays and x-rays only
- b. gamma rays, x-rays and beta particles
- c. gamma rays, alpha and beta particles
- d. alpha and beta particles only

- 1.1. ✓ Approximately how many half-value layers are required to make a tenth-value layer? 20
-
- 1.2. What exposure would be received from a 20 curie Iridium 192 source if you were standing 40 feet away for 6 minutes with no shielding? _____
-
- 1.3. What minimum and maximum ranges are required for a radiation survey meter? _____
-
- 1.4. ✓ Why is it so important to wear a film badge in its proper holder? Only
The correct ~~supplied~~ filter can the supplier
make a correct reading
-
- *1.5. What personnel monitoring devices must a radiographer's assistant wear? _____
Dosimeter & Film Badge
-
- *1.6. What radiation health physics instrument must a radiographer have at hand while performing radiography? Survey meter
-
- *1.7. How do survey meters and pocket dosimeters differ in the way they measure radiation? (How do the results differ?) Survey meter measure
Dose Rate & The dosimeters measure
amount receive
-
- *1.8. Does a film badge measure dose or dose rate? Dose
-
- *1.9. Does a pocket dosimeter measure dose or dose rate? Total Radiation
Dose
-
- *1.10. Does a survey meter measure dose or dose rate? Dose Rate
-

GROUP C - RADIOGRAPHIC EQUIPMENT - ITS USE, INSPECTION AND MAINTENANCE
PERFORMED BY THE RADIOGRAPHER

✓ Why should control cables and guide tubes be protected from grit and cleaned frequently? To prevent sticking and excessive wear
wear

• What can happen if you try to force the flexible control cable and source through the guide tube with the hand crank? _____

✓ What portion of a crank operated, remote control exposure device should be inspected most frequently to avoid creating a hazardous situation? Underline the proper answer.

- a. the locking mechanism of the camera
- b. the control cable crank assembly
- c. the hook-up between the pigtail and the control cable
- d. the closure plug used to secure the source in safe position
- Ⓒ All are important

• If the daily inspection indicates your radiographic equipment is unsafe to use, you should Have it repaired or replaced

• Why must a person use a set of remote handling tongs in an emergency to recover a disconnected source? BECAUSE THE CLOSER YOU
ARE TO IT THE MORE RADIATION YOU WILL
RECEIVE

• Why are Cobalt 60 cameras much heavier than Iridium 192 cameras when both are rated for the same curie capacity? COBALT 60 HAS A
LONGER HALF LIFE

Can the position of a source, i.e., fully exposed or fully retracted, be accurately determined by counting the number of hand crank revolutions?
WHY?

Your signature on the daily inspection report indicates what?

What is the isotope used in a Tech-Cps Model 466 camera and the maximum allowable strength of the source it can contain?

For a 30-minute exposure in a restricted area, your "CAUTION - RADIATION AREA" sign could be placed where your survey meter reads 4 mr/hr.

What information must be attached to each leak test sample?

The daily inspection of a radiographic camera reveals a crack in the outside shell. Can this be repaired (by welding) in the field? Yes No

If a leak test of a gamma ray source shows excessive leakage, what must be done?

Describe the procedure you would follow if your source should become uncoupled from the drive cable while in the exposed position.

Stop the camera and remove the source from the camera.
Remove the source from the camera and place it in the lead container.

How would you collect a leak test sample from a radiographic sealed source?

How often must a sealed source be leak tested? _____

What is the maximum allowable removable activity? _____

Your survey of your Iridium 192 camera is nowhere near the reading you have been getting (it is approximately 50% higher). This can be caused by:

- a. Improper survey meter operation?
- b. Cracked camera shielding?
- c. Improperly secured source?
- d. Another source in the area?
- e. All of the above?

Pick an exposure device and outline the inspection procedure that you would follow before you assembled the exposure device for use. Remove the protect

cap from lock Box, Crank center approximately 6" Connect cable
To pigtail, screw into lock Box, Remove safety plug from
The out connection approximately 2" from top of unit, Place
free end of guide tube in desired position keep it straight line
without kinks

A Tech-Ops Model 533 exposure device has a capacity of 100 curies of Iridium 192. Could you use this same camera for 10 curies of Cobalt 60? _____

Explain. _____

What is the reason for the leak test? To check for leaking
source

1. What is the maximum strength of the source of Iridium 192 you are allowed to use in a Automation Industries, Model 520 exposure device? _____

2. What is a collimator? _____

3. Why are exposure devices which are made of depleted uranium lighter than those of lead? _____

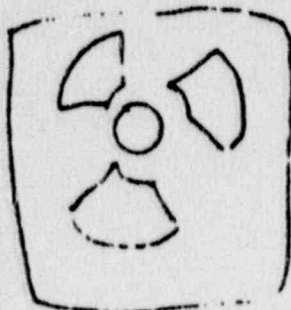
4. What is the maximum allowable dose rate at six inches from the exterior surface of an exposure device that measures less than 4 inches from the sealed source storage position to an exterior surface of the device? 50 mR/hr

75. If a radiographic exposure device measures 5 inches from the sealed source storage position to the exterior surface of the device, what is the maximum allowable dose rate at the surface? 200

200 mR/hr

GROUP D - THE REQUIREMENTS OF N.R.C. REGULATIONS

76. Are you required to post the storage compartment of the transporting vehicle if the surface reading is 1 mr/hr? YES
77. Define a radiographer. any individual who perform or who, in attendance at the site where the sealed source or source are being used,
78. Should you conduct a physical survey to permit you to post the High Radiation Area correctly? NO, it would lead to unnecessary exposure
79. What are the locking requirements for radiographic exposure devices? To survey around the exposure device ~~and~~ to make sure it is retracted into the shielded position
For Storage Containers? UNDER DOUBT pad lock in safe container
80. Can you use a "CAUTION - RADIOACTIVE MATERIAL" sign to post a high radiation area? NO EXPLAIN sign must read Caution-Radioactive area
81. Make a rough sketch of the radiation symbol used on caution signs and indicate the colors which must be used for the symbol and its background.



Yellow
Black

✓ 27. Fill in the maximum allowable exposure of individuals to radiation in restricted areas. (rem per calendar quarter)

- a. whole body, head & trunk; active blood-forming organs; lens of eyes, or gonads
- b. hands and forearms; feet and ankles
- c. skin of whole body

1.25 rem
18.75 Rem
7.5 Rem

✓ 33. The formula $5(N-18)$ less total exposure to date gives what? Unused part of permissible accumulated dose (Bank account)

✓ 34. Name two types of personnel monitoring equipment required by N.R.C. Regulations
Pocket dosimeter and Film Badge

35. What is an agreement state? _____

36. No individual under 18 years of age may receive a radiation dose in excess of _____% of 1.25 rems per calendar quarter.

37. What is the minimum age limit for a radiographer or radiographer's assistant?

18

38. What is your responsibility as a worker (employee) as outlined in Form N.R.C.-1 "Notice to Employees"? To work according to the law

and work safely and protect my coworkers

39. Is a dose of one roentgen due to x- or gamma radiation considered to be the same as a dose of one rem? _____ Why? _____

Regulations covering surveys are found in Paragraph 20.201 of Part 20 of the N.R.C. Regulations, Title 10.

Where can the phone numbers of the N.R.C. regional offices be found?
Give two locations. _____

If special forms are maintained, a radiographer may receive a radiation dose to the whole body of _____ rem per calendar quarter.

Unless special records are maintained, a radiographer is not permitted to receive a radiation dose to the whole body in excess of 1250 rem per calendar quarter.

Define a High Radiation Area. _____

Define a Radiation Area. Same as Section 20.202 (B) (3)
10 CFR 20

Are the N.R.C. regulations permanent or are they changed periodically? _____

Any radiographic area to which access is controlled by the licensee is called a _____

Regulations covering licenses for radiography and radiation safety requirements for radiographic operations are set forth in Part _____ of N.R.C. Title 10.

The standards for protection against radiation are set forth in Part 20 of N.R.C. Title 10.

No person can act as a radiographer under the N.R.C. license until he has received copies of and instructions in the regulations covered in N.R.C. Title 10, Part _____ Part _____ Part _____ Part _____

GROUP E - CASE HISTORIES OF RADIOGRAPHY ACCIDENTS AND EMERGENCY PROCEDURES

01. On a Radiation Report, are the exposure device serial number and the source serial number the same? _____ Explain. _____

102. What portion of the radiation report must you complete before you make any exposures? _____

103. A review of the case histories of radiographic accidents would seem to indicate that the primary cause of these accidents is failure to survey

104. What would you do if you have a wreck with a truck carrying an exposure device loaded with a source? Follow The Emergency manual

IN EACH TRUCK

105. What would you do if you checked your pocket dosimeter and found it had gone off-scale? Stop work Contact RSO Follow Instructions

o my Dosimeter MAKE SURE ITS WORKING
Properly

Suppose someone ignores your signs and barriers and insists on entering the radiation area. What measures would you take? crank in the

SOURCE Do Not start again until it

is clear

All physical surveys are important, but for different reasons. Give the primary reason for performing the following survey.

a. Final survey of the day To make sure source is
placed correctly

b. After each exposure To be sure the source is
properly shielded

*108. Can a radiographer's assistant keep the job site under surveillance or is a radiographer required to do this? yes

109. When working at a customer's plant, what steps must you take to advise customer personnel that you are working? _____

*110. What radiation dose rate is allowed at the outside of a truck used to transport a radioactive source? 2 mR/hr At the driver's location _____

same

111. a. What is the radiation intensity emitted from one curie of Cobalt 60 at a distance of one foot? 14,400 mR/hr

b. What is the radiation intensity emitted from one curie of Iridium 192 at a distance of one foot? 5,400 mR/hr

would a survey of the rear of a radiographic camera be a guarantee the source was safety shielded? _____

10. You barricade a temporary radiographic area and the dose rate measured at the barricade is 2 mr/hr. How many signs must you use to post the area? _____
Where must they be placed? Place a minimum of 4 "Caution - Radiation Area" signs

one at each 90° of the perimeter

What words are on the sign? _____

11. How do you restrict and control access to a cross-country pipeline radiographic area? _____

12. Does being able to lock a camera insure the source is in the safe, shielded position? No

13. How must you restrict each temporary radiographic area to control access (other than cross-country pipeline inspection)? Barricade the area at 2 meter

perimeter Place "Caution - Radiation Area" signs (4) at 90°

Place High Radiation signs as needed and keep area under constant
SURVEILLANCE

14. List three documents that the company must make available to each radiographer.

a copy of Company's Operating and Emergency Procedures Manual, a copy of the N.R.C. License and Parts 19, 20, 21 and 34 NRC Code of Federal Regulation

117. What company document must each radiographer's assistant have? Company
operating safety manual
118. What is the requirement for surveillance of a radiographic exposure device when it is in use? consents by Radiographer
OR ASSISTANT
119. What is the primary instrument used to prevent excessive exposures? SURVEY METERS
120. When must a radiographer complete a Radiation Report form? each day
an exposure device is assigned to him
121. What would you do if your exposure device was lost or stolen? Local Police
and your nearest Radiation Officer
122. When must pocket dosimeters be recharged? every morning
123. What reports must the radiographer retain a copy of at the job site (when working at temporary job locations)? Radiation Report &
weekly Report
124. On what two forms must a radiographer record his pocket dosimeter readings? weekly Report Daily Report



**NORTH DAKOTA
STATE DEPARTMENT OF HEALTH
AND CONSOLIDATED LABORATORIES**

State Capitol
Bismarck, North Dakota 58505

ENVIRONMENTAL HEALTH SECTION

1200 Missouri Avenue
P.O. Box 8620
Bismarck, North Dakota 58502-8620

RELEASE OF PORTION OF CONSENT AGREEMENT

The State Department of Health and Consolidated Laboratories hereby releases paragraph XV (D) of the Consent Agreement issued to Basin Testing Laboratories, Inc., Williston, ND, executed on June 12, 1989. Said action was filed in Williams County District Court under Civil No. 19836 dated June 22, 1989. The release of portion of Consent Agreement becomes effective at 1 P.M. on December 7, 1989.

Paragraph XV (D) states as follows:

That Basin Testing agrees to a thirty (30) day suspension of Radioactive Material License No. 33-16105-02 beginning at 5:00 o'clock p.m. on December 1, 1989. If Basin Testing operates during that suspension period, their license can be revoked.

Dated this 7th day of December, 1989.

STATE DEPARTMENT OF HEALTH
AND CONSOLIDATED LABORATORIES

Dana K. Mount
Director
Environmental Engineering

STATE OF NORTH DAKOTA
COUNTY OF WILLIAMS

IN DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

State of North Dakota,
State Department of Health and
Consolidated Laboratories,
Plaintiff,

Civil Action No. _____
CONSENT AGREEMENT

vs.

Basin Testing Laboratories, Inc.,
P.O. Box 1854,
Williston, ND 58902-1854,
William Cobban, President,
Defendant.

.....

PRELIMINARY STATEMENT

WHEREAS, Plaintiff, State of North Dakota, State Department of Health and Consolidated Laboratories (hereinafter Department), notified Defendant, Basin Testing Laboratories, Inc., of Plaintiff's intention to institute an action in District Court against the Defendant for violations of Chapter 23-20.1, Ionizing Radiation Development, of the North Dakota Century Code (NDCC), and violations of Article 33-10, Radiological Health Rules, of the North Dakota Administrative Code (NDAC), and;

WHEREAS, Plaintiff and Defendant desire to settle this matter through contemporaneous filing of a Complaint, together with a fully-executed Consent Agreement;

THEREFORE, Plaintiff, State Department of Health and Consolidated Laboratories, and Defendant, Basin Testing Laboratories, Inc., do hereby mutually agree to be bound by the terms and conditions of this Consent Agreement.

STIPULATION

It is stipulated and agreed to between the parties as follows:

I.

That Defendant accepts service of the Complaint filed with the Court, together with the Consent Agreement in this action.

II.

That Defendant admits to all of the jurisdictional allegations of the Complaint.

III.

That Basin Testing Laboratories, Inc. (hereinafter Basin Testing) is licensed by the Department to transfer, receive, possess, and use radioactive material pursuant to Chapter 23-20.1, NDCC, and Article 33-10, NDAC. Basin Testing was issued Radioactive Material License No. 33-16105-02 on January 3, 1985. Such license was amended by the North Dakota State Department of Health on March 6, 1986, and April 29, 1987. Basin Testing is located on Highway 2 and 85 North, Williston, North Dakota.

IV.

That NDAC Section §33-10-05-05(1)(3) and (4) states in part:

33-10-05-05. Personal radiation safety requirements for radiographers and radiographers' assistants.

1. Training and testing.

- a. The licensee or registrant shall not permit any individual to act as a radiographer until such individual:

- (1) Has been instructed in the subjects outlined in Appendix A of this chapter;

- (2) Has received copies of and instruction in department requirements contained in this chapter and in the applicable sections of chapters 33-10-04 and 33-10-10, department license under which the radiographer will perform radiography, and the licensee's operating and emergency procedures;
 - (3) Has demonstrated competence to use the licensee's radiographic exposure devices, sealed sources, related handling tools, and survey instruments; and
 - (4) Has demonstrated understanding of the instructions in this paragraph by successful completion of a written test and a field examination on the subjects covered.
- b. The licensee or registrant shall not permit any individual to act as a radiographer's assistant until such individual:
- (1) Has received copies of and instruction in the licensee's operating and emergency procedures;
 - (2) Has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and
 - (3) Has demonstrated understanding of the instructions in this paragraph by successfully completing a written or oral test and a field examination on the subjects covered.

. . .

3. Personnel monitoring control.

- a. No licensee or registrant shall permit any individual to act as a radiographer or as a radiographer's assistant unless, at all times during radiographic operations, each such individual shall wear a direct-reading pocket dosimeter and either film badge or a thermoluminescent dosimeter badge. Pocket dosimeters shall have a range from zero to at least two hundred milliroentgens and shall be recharged daily or at the start of each shift. Each badge and thermoluminescent dosimeter shall be assigned to and worn by only one individual.
- b. Pocket dosimeters shall be read and exposures recorded daily.

- c. Pocket dosimeters shall be checked at periods not to exceed one year for correct response to radiation. Acceptable dosimeters shall read within plus or minus thirty percent of the true radiation exposure.
 - d. An individual's film badge or thermoluminescent dosimeter shall be immediately processed if a pocket dosimeter is discharged beyond its range.
 - e. Reports received from the badge or thermoluminescent dosimeter processor and records of pocket dosimeter readings shall be maintained for inspection by the department.
4. Supervision of radiographers' assistants. Whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by subsection 3 of section 33-10-05-06 to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision shall include:
- a. The radiographer's personal presence at the site where the sealed sources are being used.
 - b. The ability of the radiographer to give immediate assistance if required.
 - c. The radiographer's watching the assistant's performance of the operations referred to in this section.

V.

That NDAC §33-10-04-05 NDAC states in part:

33-10-04-05. Records, reports, and notification.

- 1. Records of surveys, radiation monitoring, and disposal.
 - a. Each licensee or registrant shall maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under subsection 2 of section 33-10-04-03. Such records shall be kept on Department Form RAD 683, in accordance with the instructions contained in that form, or on clear and legible records containing all the information required by Department Form RAD 683. The doses entered on the forms or records shall be for periods of time not exceeding one calendar quarter.

. . .

VI.

That NDAC §33-10-05-06(2) Precautionary procedures in radiographic operations states in part:

33-10-05-06. Precautionary procedures in radiographic operations.

. . .

2. **Posting.** Notwithstanding any provisions in subdivision c of subsection 4 of section 33-10-04-03, areas in which radiography is being performed shall be conspicuously posted as required by paragraph 1 of subdivision c of subsection 3 of section 33-10-04-03 and subdivision b of subsection 3 of section 33-10-04-03.

VII.

That Condition 12 of amended License No. 33-16105-02 states as follows:

12. Licensed material shall be used by, or under the supervision of and in the physical presence of, Carter Bohn, Ken Kain, Jerry Thompson, and individuals who have completed a Department or NRC approved training program. The licensee shall maintain records of individuals designated as users.

VIII.

That Condition 16 of amended License No. 33-16105-02 states as follows:

16. Except as specifically provided otherwise by this license, the licensee shall possess and use licensed material described in Items 6, 7, and 8 of this license in accordance with statements, representations, and procedures contained in applications and letters dated November 15, 1984, December 21, 1984, January 24, 1986, February 24, 1986, and March 12, 1987.

IX.

That the Department received information regarding this Notice of Violation on the following days: June 16, 1988, June 20, 1988, June 23-24, 1988, June 28-29, 1988, and July 7, 1988.

This Notice of Violation is based on information documented in memoranda dated June 16, 1988, June 23, 1988, June 24, 1988, June 30, 1988, July 7, 1988 and a letter received June 20, 1988.

X.

That based on information received by the Department, Basin Testing has not used proper posting of radiation area signs while conducting radiographic operations as required and referenced in paragraphs VI and VIII.

XI.

That further, based on information received by the Department, Basin Testing has allowed a Level I radiographer to work as a Level II radiographer.

XII.

That based on information available to the Department, Basin Testing had used Level I radiographers without the supervision of Level II radiographers as referenced and required in paragraphs IV, VII, and VIII.

XIII.

That any violation of the Radioactive Material License No. 33-16105-02, is also a violation of Chapter 23-20.1, Ionizing Radiation Development of the North Dakota Century Code (NDCC) and Article 33-10, Radiological Health Rules, of the North Dakota Administrative Code (NDAC).

XIV.

That on the 5th day of August, 1988, Basin Testing was served with a Notice of Violation issued by the Department regarding the above-referenced alleged violations.

04-
1-04
secure

21042

XV.

That the Plaintiff and Defendant desire to settle this matter on the following terms:

- A. Basin Testing shall be levied a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) for violations listed in the Complaint and admitted to herein. That Four Hundred Dollars (\$400.00) of the amount shall be due and payable to the State of North Dakota immediately upon the entry of Judgment herein. The remaining One Thousand Six Hundred Dollars (\$1,600.00) shall be suspended and ultimately dismissed upon the following terms:
 - B. That Six Hundred Dollars (\$600.00) will be suspended and ultimately dismissed if Basin Testing furnishes the Department with all required documentation to correct the name of the designated Radiation Safety Officer, updates all operations and emergency procedures, and provides appropriate training records and certificates to certify that the currently designed Radiation Safety Officer has received at least forty hours of Radiation Safety Officer training at a Nuclear Regulatory Commission or other agreement state approved course for review by the Department by April 15, 1989.
 - C. One Thousand Dollars (\$1,000.00) shall be suspended and ultimately dismissed if Basin Testing maintains compliance with all Ionizing Radiation Development statutory and Radiological Health regulatory

entry of Judgment herein.

- D. That Basin Testing agrees to a thirty (30) day suspension of Radioactive Material License No. 33-16105-02 beginning at 5:00 o'clock p.m. on December 1, 1989. If Basin Testing operates during that suspension period, their license can be revoked.
- E. The State of North Dakota, State Department of Health and Consolidated Laboratories, in consideration of Defendant entering into this Consent Agreement, hereby releases Defendant from all further liability under Chapter 23-20.1, NDCC, for any violations which may have occurred, or are alleged to have occurred prior to the signing of this Consent Agreement.
- F. That Defendant agrees to the entry of Judgment against it in accordance with the terms contained herein.

IN WITNESS WHEREOF, the parties have set their hands.

PLAINTIFF:

State of North Dakota
State Department of Health
and Consolidated Laboratories

By: William J. Delmore
William J. Delmore
Assistant Attorney General

Date: 6/12/89

DEFENDANT:

Basin Testing Laboratories, Inc.

By: William S. Cobban
Its Agent: William S. Cobban

Date: 6/9/89

12/1/89 - under susp. til 12/7



Department of Health and Social Services

Division of Health and Medical Services

MATHAWAY BUILDING

CHEYENNE, WYOMING 82002-0710

July 21, 1989

(307) 777-7956

Basin Testing Laboratory, Inc.
P. O. Box 1854
Williston, ND 58801

Attn: William S. Cobban

RE: CERTIFICATE OF REGISTRATION #NR-00-3306 R, Effective Date: 8-1-89
Expiration Date: 8-1-91

Dear Mr. Cobban:

We wish to acknowledge the receipt of your letter requesting renewal of your Wyoming registration for the use of radioactive materials, in accordance with W.S. 35-4-301 et seq.

This registration shall remain in effect for 24 months, or until such time as your activities have changed. We ask that you notify this office of any changes in federal or state licensing, administrative personnel for radiation purposes, and/or use of radioactive materials, so that we can keep your registration current. A timely renewal request is the responsibility of the registrant.

Wyoming is a nonagreement state with the U.S. Nuclear Regulatory Commission (NRC). Therefore, this Certificate of Registration is not a license to use radioactive materials and does not exempt the holder of said certificate from performing NRC or other federal and agreement state notifications. As an example, one of the functions lacking for a nonagreement state, is that we have no means for reciprocation of licenses. Therefore, prior to your anticipated use of radioactive materials in Wyoming, you will need to forward a copy of your NRC Form 241 to this office. This is for your information.

This letter will serve as a "Certificate of Registration". Thank you for your cooperation and interest in good radiological health practices. We look forward to working with you.

Authorized by,

Julius E. Haes, Jr., MPH
Director of Radiological Health Services

JEH/bl





**NORTH DAKOTA
STATE DEPARTMENT OF HEALTH
AND CONSOLIDATED LABORATORIES**

State Capitol
Bismarck, North Dakota 58505

ENVIRONMENTAL HEALTH SECTION

July 19, 1988

1200 Missouri Avenue
P.O. Box 5520
Bismarck, North Dakota 58502-5520

Basin Testing Laboratory, Inc.
Highway 2 & 85 North
P.O. Box 1854
Williston, ND 58802-1854

Attention: William S. Cobban, President

Re: Inspection of Radioactive Material
License No. 33-16105-02

Ladies and Gentlemen:

This letter relates to an inspection of the activities at Basin Testing Laboratory, Inc., which are authorized by the above-referenced radioactive material license. This inspection was performed on June 28 and 29, 1988, by Terry Lindsey and Jeffrey Burgess of this Department.

It appears certain activities were not conducted in full compliance with the North Dakota Radiological Health Rules. The items of apparent noncompliance and references to pertinent requirements are enumerated as follows:

1. The radiation safety officer indicated in Condition 12 of the above-referenced license is no longer employed by the licensee. This is contrary to Condition 12 and the license needs to be amended to reflect an appropriate radiation safety officer. It should be noted that this is a reoccurring item of noncompliance, as cited in a Notice of Violation dated April 29, 1987.
2. Basin Testing Laboratory, Inc. has changed its corporate name to Basin Services without notifying this Department and requesting an amendment to the license. This is contrary to Item 1 and Condition 16 of the above-referenced radioactive material license.

Recommendations:

1. It appears that Basin Testing is using the diamond-shaped radioactive placard on their vehicles improperly. If the dose rate on the surface of the storage container in the truck is less than 50 mR/hour and is less than 1 mR/hour at 3 feet, a Radioactive II label can be used on the container, as was the case during our inspection. Vehicles carrying only White I or Yellow II label packages or storage containers do not require placards.

ATTACHMENT NO. 5

July 19

For portable Iridium-192 cameras with new sources, the rate at the surface usually exceeds 50 mR/hour. Therefore, the camera will require the Radioactive III label while being shipped if no outer container is used. As the source decays, the dose rate at the surface will eventually drop below 50 mR/hour and a Radioactive II label would be acceptable. If a package requires Yellow III and the dose rate on the surface of the storage device in the truck is greater than 50 mR/hour and more than 1 mR/hour at 3 feet, the vehicle in which it is carried is required to be placarded on all four sides of the vehicle.

2. During the inspection it was noted that radiation area signs were permanently mounted on the front of the vehicle. This is an incorrect application of this sign. The radiation area sign is to be used in an area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body would receive in any 1 hour a dose in excess of 5 millirems, or in any 5 consecutive days, a dose in excess of 100 millirems. This sign should not be posted when such exposure rates are not present. Perhaps a cone similar to the type used in highway construction, with a radiation area sign affixed or use of a regular sign, "Caution: Radiation Area," mounted on a base would be suitable. Additionally, whenever working in populated or fixed sites areas, where visual control of the radiation area is unmanageable, radiation area should be roped off to control access.

Only placards (when required) should be placed on transport vehicles. Radioactive White I, or Radioactive Yellow II, or Radioactive Yellow III labels, as appropriate, should be placed on containers or devices containing radioactive material. Radiation warning signs are separately displayed in working areas to indicate the hazard area.

3. The DCA Model 909 dosimeter charger produces very poor lighting of the dosimeter and should be cleaned and repaired to properly operate.
4. When performing licensed activities outside of this State nonagreement states, such as Montana, Wyoming, or Dakota, the U.S. Nuclear Regulatory Commission notified. The address is 611 Ryan Plaza Drive, Suite Arlington, TX 76011, telephone 817-860-8100. If you already, you should notify the NRC immediately of current activities in Wyoming.

This letter gives you the opportunity to advise us of your position concerning the above. In particular, we would like to know if you have taken any corrective steps you have taken with respect to the above-mentioned items for compliance and the date all corrective activities are completed. Your reply should be sent to us

Smith (untitled)

Laboratory, Inc.

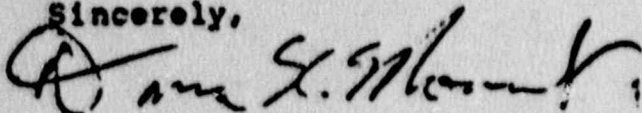
- 3 -

July 19, 1988

days of the date of this letter to assure prompt attention in our further evaluation of this matter.

Based on separate and additional information made available to this Department, you will be receiving a "Notice of Violation" in a separate letter and you will be given the opportunity to respond.

Sincerely,



Dana K. Mount, P.E.
Director, Division of
Environmental Engineering

DKM/JLB:db

BASIN SERVICES, INC

GROWTH 1983-1989

	1983	1984	1985**	1986	1987***	1988	1989
JANUARY			2500	5367	3691	13292	9918
FEBRUARY			3600	7640	838	7624	2448
MARCH			9500	17785	7625	14650	19162
APRIL			12250	18697	7360	56738	29332
MAY	START		38500	14092	12788	37009	33424
JUNE			11000	16418	23830	31165	28142
JULY			6500	26325	10552	46525	19239
AUGUST			9000	24806	37598	40152	51433
SEPTEMBER			11500	36455	42716	54234	32793
OCTOBER			11500	28797	39766	23344	49263
NOVEMBER			25750	4850	38032	7485	16776
DECEMBER			16250	4068	28117	15000	6950
TOTAL	17000	60000 *	157850	205300	252913	326302	298880

* CMT ONLY

** START NDT SERVICES

*** START VR SERVICES MAY

REMARKS: 30% increase in sales 1985 to 1986
 23% increase in sales 1986 to 1987
 29% increase in sales 1987 to 1988
 9% DECREASE in sales 1988 to 1989



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 06 1989

Docket No. 15000033
General Licensee (10 CFR 150.20)
EA 88-265

Basin Testing Laboratory, Inc.
dba Basin Services, Inc.
ATTN: Mr. William S. Cobban
President
Post Office Box 1854
Williston, North Dakota 58202-1854

Gentlemen:

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY AND ORDER TO SHOW
CAUSE WHY LICENSE SHOULD NOT BE SUSPENDED

This is in reference to the letter dated February 22, 1989, submitted by Basin Testing Laboratory, Inc., in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated January 19, 1989. This is also in reference to an investigation of related matters conducted by NRC's Office of Investigations (OI) and completed in July 1989.

Our January 19 letter and Notice described violations of NRC requirements identified as a result of NRC inspections. These violations involved but were not limited to: (1) Basin's use of an unqualified and unsupervised individual to conduct industrial radiography activities, a violation of 10 CFR 34.44; 2) Basin's failure to have informed NRC of its work in non-Agreement States from 1985 to 1988, a violation of 10 CFR 150.20; and 3) Basin's having provided NRC inaccurate information in its initial responses to NRC's inspection findings, a violation of 10 CFR 30.9.

To emphasize the need for increased and improved management attention to activities authorized by your general license, so as to ensure your activities are conducted safely and in accordance with the terms of your general license, a civil penalty of \$5000 was proposed.

In your February 22 response, you admitted that the violations occurred. However, you requested that the civil penalty be mitigated or retracted.

After consideration of your February 22 response, we have concluded for the reasons stated in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty that Basin has provided insufficient justification for retraction or mitigation of the civil penalty.

Accordingly, we hereby serve the enclosed Order on Basin Testing Laboratory, Inc., imposing a civil monetary penalty in the amount of \$5,000. We will review the effectiveness of your corrective actions during a subsequent inspection.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

89-2486689-289

Basin Testing Laboratory, Inc.

- 2 -

In further regard to Basin's failure to inform NRC of its activities in NRC jurisdiction, we are enclosing the synopsis from OI Report No. 4-89-006. Based on this investigation, we have determined, in relation to this violation, that the president of Basin "knowingly and intentionally disregarded NRC regulations which he admitted he became aware of in June 1988." We have also concluded that the statement made in Basin's February 22, 1989, response to NRC's Notice, that "Basin was simply ignorant of the requirement for completing the form 241 prior to conducting activities in non-Agreement States," was false with respect to activities in non-Agreement States after June 1988.

Based on NRC's February 28, 1989 inspection of the corrective actions taken in response to our Notice, it appears that Basin has acted to bring its activities into compliance with regulatory requirements, including making the proper notification to NRC of its work in non-Agreement States. In addition, because of this inspection, Basin was given permission to resume radiographic activities in states under NRC's jurisdiction by letter dated March 17, 1989. This letter ended Basin's voluntary suspension of its activities within the NRC's jurisdiction as stated in Confirmation of Action Letter (CAL) 88-17, dated October 12, 1988.

Nonetheless, the fact that Basin in June 1988 ignored the advice of North Dakota Department of Health inspectors to notify NRC of its activities performed in states under NRC jurisdiction, and made a statement to the NRC which has been determined to be false, raises significant questions concerning Basin's integrity and its intent to comply with NRC regulations in the future. Accordingly, Basin is required to respond within 20 days to the enclosed Order to Show Cause why its general license, authorized pursuant to 10 C.F.R. 150.20, should not be suspended. Basin's rights to contest the issuance of the Order and to request a hearing are explained in Sections V and VI of the Order.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosures: As Stated

cc:
North Dakota Radiation Control
Program Director
NRC Public Document Room

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Basin Testing Laboratory, Inc.
dba Basin Services, Inc.
Williston, North Dakota

}
Docket No. 15000033
General Licensee (10 CFR 150.20)
EA 88-265

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Basin Testing Laboratory, Inc. (licensee) is the holder of North Dakota Materials License No. ND 33-16105-02 issued by the state of North Dakota on January 3, 1985, and due to expire on December 31, 1989. The license authorizes the licensee to possess sealed radioactive sources in radiography devices and to conduct industrial radiography activities. 10 CFR 150.20 grants the licensee a general license to conduct these activities in Nuclear Regulatory Commission (NRC or Commission) jurisdiction (non-Agreement States).

II

Inspections of the licensee's activities in NRC jurisdiction were conducted on September 1 and October 5-6, 1988. The results of these inspections indicated 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 was served upon the licensee by letter dated January 19, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated February 22, 1989. In its response, the licensee admitted that the violations occurred as set forth in the Notice, but requested that the civil penalty be mitigated or retracted.

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III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

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

The licensee pay a civil penalty in the amount of \$5,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

V

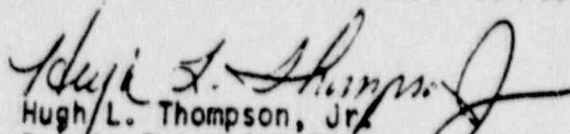
The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an

Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. 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 issue to be considered at such hearing shall be whether, on the basis of the violations as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland,
this 6th day of December 1989.

APPENDIX

EVALUATIONS AND CONCLUSIONS

On January 19, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during NRC inspections. Basin Testing Laboratory responded to the Notice on February 22, 1989. The licensee admitted the violations but requested that the proposed civil penalty be mitigated or retracted. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of Violations

1. Violations Assessed a Civil Penalty

- A. 10 CFR 34.31(a)(4) requires, in part, that the licensee shall not permit any individual to act as a radiographer until such individual has demonstrated understanding of the instructions in 10 CFR 34.31(a) by successful completion of a written test and a field examination on the subjects covered.

10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. Personal supervision shall include: 1) the radiographer's personal presence at the site where the sealed sources are being used, 2) the ability of the radiographer to give immediate assistance if required, and 3) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on November 10-14 and November 18 and 19, 1987, at temporary job sites in Wyoming, the licensee permitted a radiographer's assistant, who did not meet the requirements of 10 CFR 34.31(a) and who was not under the personal supervision of a radiographer, to conduct the radiographic operations described in 10 CFR 34.44. Specifically, the radiographer's assistant had not demonstrated understanding of the instructions in 10 CFR 34.31(a) by successful completion of a written test and a field examination on the subjects covered, and was permitted to conduct the radiographic operations listed in 10 CFR 34.44 while not in the presence of, and observed by, a qualified radiographer.

- B. 10 CFR 150.20(b)(1) requires, in part, that prior to engaging in activities in non-Agreement States, except as specified in 10 CFR 150.20(c), any person holding a specific license from an Agreement State shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form 241 (revised) "Report of Proposed Activities in Non-Agreement States" and 4 copies of its Agreement State specific license with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of 10 CFR Part 20, for the Region in which the Agreement State that issued the license is located.

Contrary to the above, between 1985 and October 6, 1988, the licensee engaged in licensed activities in non-Agreement States on at least 16 occasions, and did not file any NRC Form 241 with the appropriate Regional Administrator, and the exceptions of 10 CFR 150.20(c) did not apply.

- C. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, by letter dated October 13, 1988, in response to NRC's inspection findings which had been provided to the president of the company by telephone on October 12, 1988, the licensee's president indicated that the licensee had conducted work on September 12, 1988, in a particular area of North Dakota, an Agreement State. This information was not complete and accurate in all material respects in that the radiography work in question had been conducted on September 12, 1988, in Montana.

These violations have been assessed in the aggregate as a Severity Level III problem. (Supplement VI).

Cumulative Civil Penalty - \$5,000 (assessed equally among the violations).

II. Violations Not Assessed A Civil Penalty

10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside of the confines of its plant or other place of use shall comply with the applicable requirements of the regulations appropriate to the mode of transportation of the Department of Transportation in 40 CFR Parts 170 through 189.

- A. 49 CFR 172.200(a) requires, in part, that except as otherwise provided in Subpart C, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping papers.

49 CFR 172.202(a) requires, in part, that the description of a hazardous material on the shipping paper must include the proper shipping name prescribed for the material in 49 CFR 172.101 or 172.102, the identification number, preceded by "UN" or "NA" as appropriate.

49 CFR 172.203(a) requires, in part, that a description of a shipment of radioactive material must also include a description of the physical and chemical form of the material and the category of label and transportation index.

Contrary to the above, as of October 6, 1988, shipping papers utilized during the transport of industrial radiographic sources containing curie quantities of iridium-192 did not contain any of the above required information.

This is a Severity Level IV violation. (Supplement V)

- B. 49 CFR 172.301 requires, in part, that except as provided by this subchapter packaging having a rated capacity of 110 gallons or less shall be marked with the proper shipping name and identification number, preceded by "UN" or "NA", as appropriate, to identify whether the content descriptions are considered appropriate for international shipments as described in 49 CFR 172.101(e).

Contrary to the above, on September 12, 1988, a package which was not excepted by the subchapter (Tech-Ops Model 520 exposure device) was utilized in transport of a sealed source of approximately 67 curies of iridium-192 and the identification number, preceded by "UN" was not included in the package markings.

This is a Severity Level IV violation. (Supplement V)

Summary of Licensee's Response and Request for Mitigation

The licensee admits that the violations occurred as stated in the Notice. However, the licensee states that the civil penalty should be mitigated in accordance with the factors in Section V.B. of the Enforcement Policy. Specifically, the licensee states: (1) that self identification does not apply; (2) that corrective actions were taken to assure future compliance; (3) that Basin's past performance warrants mitigation in that the violations described in the Notice represent the only occasions on which Basin has been accused of violating state or federal requirements; 4) that prior notice is not applicable in that Basin had not previously been notified of alleged violations; 5) that there are not multiple examples of violations with the exception of Basin's failure to file 241 forms; and 6) that the violations were of brief duration with the exception of Basin's failure to file 241 forms.

The licensee also states that none of the violations were intentional, and that the assessment of a civil penalty of \$5000 will place a significant financial hardship upon Basin. In addition, the licensee claims that, in accordance with Table 1A. of the Enforcement Policy, Basin should not be assessed a civil penalty because it is properly designated as an industrial user of material having violations classified as "safeguards." In the alternative, the licensee requests that the NRC exercise its discretion under Section V.G of the Enforcement Policy and mitigate or suspend imposition of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

In deciding to propose a \$5,000 civil penalty for the violations in Section I of the Notice, NRC gave consideration to each of the adjustment factors in Section V.B. of the Enforcement Policy, and no adjustment to the base civil penalty was deemed appropriate. NRC views the licensee's comments regarding the policy's adjustment factors in the following way:

1. Identification and Reporting -- NRC agrees that this factor is not applicable. Although the revisions to the policy published in October 1988 provide for increasing a penalty if violations are identified by NRC rather than the licensee, the violations that were the subject of this action, while discovered by the NRC, were found prior to the revisions to the policy becoming effective.
2. Corrective Actions to Prevent Recurrence -- NRC agrees that, ultimately, the licensee implemented corrective actions to prevent noncompliance. However, we cannot conclude that Basin's corrective actions were prompt. Nor does NRC view Basin's corrective actions as particularly comprehensive. Thus, on balance, NRC sees no basis for any adjustment on the basis of this factor.
3. Past Performance -- In terms of compliance with NRC requirements, there was no history of past performance to rely upon since NRC had not previously inspected Basin. Thus, there is no basis for adjustment of the proposed civil penalty based upon this factor.
4. Prior Notice of Similar Events, Multiple Occurrences and Duration -- The licensee's reliance upon these factors as a basis for mitigation or retraction of the civil penalty is misplaced, as under the Enforcement Policy these factors are only considered as a basis for escalation of the base civil penalty.

The licensee asserts that none of the violations were intentional, and yet admits, in its response, that it knowingly allowed a radiographer's assistant to conduct radiographic operations. Further, based on an investigation by NRC's Office of Investigations (OI), it appears that the licensee's president "knowingly and intentionally disregarded NRC regulations which he became aware of in June 1988." Thus, based on the above facts, the NRC is unconvinced by the licensee's assertion that none of the violations were intentional, as its actions show willful noncompliance with the NRC's requirements.

NRC's Enforcement Policy states that "it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities." While Basin states that this civil penalty would place a significant hardship on the company, it provides no evidence to suggest that paying the penalty would result in putting the company out of business or would adversely affect its ability to conduct its activities safely.

The NRC concurs with the licensee's statement that its program is correctly designated as an industrial user of material based on Table 1A. in the Enforcement Policy. However, the violations assessed a civil penalty involve "materials operations," not safeguards, and therefore, the Table 1A. base civil penalty for an industrial user is \$10,000. When the factor for Severity Level as indicated in Table 1B. of the Enforcement Policy is considered, the base civil penalty becomes \$5000 for the classification of the three violations in the aggregate at Severity Level III.

In regard to the licensee's request that NRC exercise the discretion provided in Section V.G. of the Enforcement Policy, there has not been a basis provided that would warrant the exercise of discretion for these NRC identified willful violations.

NRC Evaluation of Letter dated June 5, 1989 from Licensee's Attorney

Subsequent to the licensee's response of February 22, 1989, the NRC received a letter from the licensee's attorney dated June 5, 1989. This letter contended, among other things, that all of Basin's Level I and Level II operators were, in fact, radiographers and not radiographer's assistants and, therefore, that the licensee did not have any radiographer's assistants conducting radiographic processes, and did not fail to supervise radiographer's assistants. This letter contradicted the licensee's previous sworn admission of Violation I.A. in its February 22 response. Based on a telephone discussion between an NRC Region IV staff member and the attorney on June 30, 1989, the attorney orally withdrew his contentions. Therefore, the NRC has disregarded the contentions in the June 5, 1989 letter.

NRC Conclusion

NRC concludes based on its evaluation of the licensee's response that Basin has not provided an adequate basis for mitigation or retraction of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of \$5,000 should be imposed.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Basin Testing Laboratory, Inc.
dba Basin Services, Inc.
Williston, North Dakota

}
}
}

Docket No. 15000033
General License (10 CFR 150.20)
EA 88-265

ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE SUSPENDED

I

Basin Testing Laboratory, Inc. (licensee) is the holder of North Dakota Materials License No. ND 33-16105-02 issued by the state of North Dakota on January 3, 1985, and due to expire on December 31, 1989. The license authorizes the licensee to possess sealed radioactive sources in radiography devices and to conduct industrial radiography activities. 10 CFR 150.20 grants the licensee a general license to conduct these activities in Nuclear Regulatory Commission (NRC or Commission) jurisdiction (non-Agreement States).

II

Inspections of the licensee's activities within NRC jurisdiction were conducted on September 1 and October 5-6, 1988. The results of these inspections indicated 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 was served upon the licensee by letter dated January 19, 1989. Three violations were categorized in the aggregate at Severity Level III and assessed a civil penalty in the amount of \$5,000. These involved: (1) Basin's permitting a radiographer's assistant, who had not completed a written test or field examination, to conduct radiographic operations while not in the presence of, and observed by, a qualified radiographer, a violation of 10 CFR 34.44;

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(2) Basin's failure to have informed NRC of its work in NRC jurisdiction from 1985 to 1988 by filing an NRC Form 241, a violation of 10 CFR 150.20; and
(3) Basin's having provided NRC inaccurate information in its initial responses to the NRC's inspection findings, a violation of 10 CFR 30.9. In a February 22, 1989, response, Basin admitted the violations but sought to have the civil penalty mitigated or withdrawn. Based on its evaluation of Basin's arguments for mitigation, NRC is issuing, on the same date as this Order, an Order imposing upon Basin a civil penalty in the same amount as that proposed.

In its February 22, 1989, reply, which was provided as a sworn statement signed by Basin's President, William Cobban, Basin made the following statement in regard to the reason for its failure to have filed an NRC Form 241: "Basin was simply ignorant of the requirement for completing the form 241 prior to conducting activities in non-Agreement States." Because this statement was in conflict with information NRC had obtained from the North Dakota Department of Health regarding its inspections of Basin, NRC Region IV requested NRC's Office of Investigations (OI) to determine whether the company's president made a false statement to the NRC and whether Basin intentionally failed to inform NRC of its activities in non-Agreement States.

In the Report of Investigation 4-89-006, completed in July 1989, OI determined that the President of Basin "knowingly and intentionally disregarded NRC regulations which he admitted he became aware of in June 1988." OI also determined that the previously mentioned statement in Basin's February 22, 1989,

reply to NRC was false with respect to licensed activities Basin conducted in non-Agreement States after June 1988 but before NRC's inspections in September and October 1988. The basis for OI's findings is that Basin was informed during an inspection by the North Dakota Department of Health in June 1988 and in July 1988 in a written inspection report that it had an obligation to notify NRC of its then-current activities in Wyoming, a non-Agreement State, an obligation with which Basin did not comply.

In addition, the licensee at the Enforcement Conference argued that it was in compliance with 10 CFR 34.44 because there was a radiographer on site; however, in its February 22, 1989 response, the licensee admits it knowingly allowed a radiographer's assistant to conduct radiographic operations in violation of NRC's requirements.

III

On the basis of the information discussed in Section II of this Order, NRC concludes that Basin committed willful violations of NRC requirements in: 1) failing to inform NRC of its licensed activities in Wyoming (Laramie Pipeline, Laramie, Wyoming) which occurred from June to August 1988, and 2) providing a false statement to the NRC as to its knowledge of this requirement. In addition, the licensee in its February 22 response, admits it knowingly allowed a radiograph assistant to conduct radiographic operations in violation of NRC requirements. NRC recognizes based on its February 28, 1989, inspection that Basin currently appears to be in compliance with the NRC's regulations. However, because of the past willful violations, the NRC has substantial questions as to whether there is

reasonable assurance that the licensee will comply in the future with the Commission requirements, including providing complete and accurate responses to the Commission's duly authorized agents. Therefore, the NRC requires that Basin Testing Laboratory, Inc., show cause why the general license authorized pursuant to 10 CFR 150.20 which allows Basin to conduct industrial radiography activities in locations under NRC jurisdiction should not be suspended until Basin Testing Laboratory, Inc. has taken sufficient actions to assure that licensed activities will be properly conducted and information provided the Commission and agents will be complete and accurate.

IV

In view of the above, and pursuant to Sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended (Act), and the regulations in 10 CFR Parts 2, 30, 34 and 150, IT IS HEREBY ORDERED THAT:

Basin Testing Laboratory, Inc., doing business as Basin Services, Inc., which holds License Number ND 33-16105-02 issued by the state of North Dakota, show cause within 20 days of the date of this Order why its general license authorized by 10 CFR 150.20 to conduct industrial radiography activities within NRC jurisdiction should not be suspended.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under

oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. IF THE LICENSEE FAILS TO FILE AN ANSWER WITHIN THE SPECIFIED TIME, CONSENTS TO THIS ORDER, OR FAILS TO REQUEST A HEARING IN ACCORDANCE WITH SECTION VI BELOW, AND IN THE ABSENCE OF ANY OTHER REQUEST FOR A HEARING, THIS ORDER SHALL BE FINAL WITHOUT FURTHER PROCEEDINGS.


VI

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555. Copies also should be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. 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 the hearing. If a hearing is held, the issue to be considered shall be whether the licensee's general license under 10 CFR 150.20 should be suspended.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland,
this 6th day of December 1969.

Department of Transportation in 40 CFR parts 170 through 180.

A. 49 CFR 172.200(a) requires, in part, that except as otherwise provided in subpart C, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping papers.

49 CFR 172.200(e) requires, in part, that the description of a hazardous material on the shipping paper must include the proper shipping name prescribed for the material in 49 CFR 172.201 or 172.202, the identification number, preceded by "UN" or "NA" as appropriate.

49 CFR 172.200(a) requires, in part, that a description of a shipment of radioactive material must also include a description of the physical and chemical form of the material and the category of label and transportation index.

Contrary to the above, as of October 6, 1988, shipping papers utilized during the transport of industrial radiographic sources containing curie quantities of Iridium-192 did not contain any of the above required information.

This is a Severity Level IV violation. (Supplement V)

B. 49 CFR 172.301 requires, in part, that except as provided by this subchapter packaging having a rated capacity of 110 gallons or less shall be marked with the proper shipping name and identification number, preceded by "UN" or "NA", as appropriate, to identify whether the content descriptions are considered appropriate for international shipments as described in 49 CFR 172.301(e).

Contrary to the above, on September 12, 1988, a package which was not exempted by the subchapter (Tech-Ops Model 320 exposure device) was utilized in transport of a sealed source of approximately 67 curies of Iridium-192 and the identification number, preceded by "UN" was not included in the package markings.

This is a Severity Level IV violation. (Supplement V)

Summary of Licensee's Response and Request for Mitigation

The licensee admits that the violations occurred as stated in the Notice. However, the licensee states that the civil penalty should be mitigated in accordance with the factors in Section V.E. of the Enforcement Policy. Specifically, the licensee states: (1) That self identification does not apply; (2) that corrective actions were taken to assure future compliance; (3) that Basin's past performance warrants mitigation in that the violations described in the Notice represent the only occasions on which Basin has been accused of violating state or federal requirements; (4) that prior notice is not applicable in that Basin had not previously been notified of alleged violations; (5) that there are not multiple examples of violations with the exception of Basin's failure to file 241 forms; and (6) that the violations were of brief duration with the exception of Basin's failure to file 241 forms.

The licensee also states that none of the violations were intentional, and that the assessment of a civil penalty of \$5000 will place a significant financial hardship upon Basin. In addition, the licensee claims that in

accordance with Table 1A. of the Enforcement Policy, Basin should not be assessed a civil penalty because it is properly designated as an industrial user of material having violations classified as "safeguards." In the alternative, the licensee requests that the NRC exercise its discretion under section V.G. of the Enforcement Policy and mitigate or suspend imposition of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

In deciding to propose a \$5,000 civil penalty for the violations in Section I of the Notice, NRC gave consideration to each of the adjustment factors in section V.E. of the Enforcement Policy, and no adjustment to the base civil penalty was deemed appropriate. NRC views the licensee's comments regarding the policy's adjustment factors in the following way:

1. Identification and Reporting—NRC agrees that this factor is not applicable. Although the revisions to the policy published in October 1988 provide for increasing a penalty if violations are identified by NRC rather than the licensee, the violations that were the subject of this action, while discovered by the NRC, were found prior to the revisions to the policy becoming effective.

2. Corrective Actions to Prevent Recurrence—NRC agrees that, ultimately, the licensee implemented corrective actions to prevent noncompliance. However, we cannot conclude that Basin's corrective actions were prompt. Nor does NRC view Basin's corrective actions as particularly comprehensive. Thus, on balance, NRC sees no basis for any adjustment on the basis of this factor.

3. Past Performance—In terms of compliance with NRC requirements, there was no history of past performance to rely upon since NRC had not previously inspected Basin. Thus, there is no basis for adjustment of the proposed civil penalty based upon this factor.

4. Prior Notice of Similar Events, Multiple Occurrences and Duration—The licensee's reliance upon these factors as a basis for mitigation or retraction of the civil penalty is misplaced, as under the Enforcement Policy these factors are only considered as a basis for escalation of the base civil penalty.

The licensee asserts that none of the violations were intentional, and yet admits, in its response, that it knowingly allowed a radiographer's assistant to conduct radiographic operations. Further, based on an investigation by NRC's Office of Investigations (OI), it appears that the licensee's president "knowingly and intentionally disregarded NRC regulations which he became aware of in June 1988." Thus, based on the above facts, the NRC is unconvinced by the licensee's assertion that none of the violations were intentional, as its actions show willful noncompliance with the NRC's requirements.

NRC's Enforcement Policy states that "it is not the NRC's intention that the economic impact of a civil penalty be such that its puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate license activities) or adversely

affects a licensee's ability to safely conduct licensed activities." While Basin states that this civil penalty would place a significant hardship on the company, it provides no evidence to suggest that paying the penalty would result in putting the company out of business or would adversely affect its ability to conduct its activities safely.

The NRC concurs with the licensee's statement that its program is correctly designated as an industrial user of material based on Table 1A. in the Enforcement Policy. However, the violations assessed a civil penalty involve "materials operations," not safeguards, and therefore, the Table 1A. base civil penalty for an industrial user is \$10,000. When the factor for Severity Level as indicated in Table 2B. of the Enforcement Policy is considered, the base civil penalty becomes \$5000 for the classification of the three violations in 2 - aggregate at Severity Level III.

In regard to the licensee's request that NRC exercise the discretion provided in Section V.G. of the Enforcement Policy, there has not been a basis provided that would warrant the exercise of discretion for these NRC identified willful violations.

NRC Evaluation of Letter dated June 6, 1989 from Licensee's Attorney

Subsequent to the licensee's response of February 22, 1989, the NRC received a letter from the licensee's attorney dated June 6, 1989. This letter contended, among other things, that all of Basin's Level I and Level II operators were, in fact, radiographers and not radiographer's assistants and, therefore, that the licensee did not have any radiographer's assistants conducting radiographic processes, and did not fail to supervise radiographer's assistants. This letter contradicted the licensee's previous sworn admission of Violation 1.A. in its February 22 response. Based on a telephone discussion between an NRC Region IV staff member and the attorney on June 20, 1989, the attorney orally withdrew his contentions. Therefore, the NRC has disregarded the contentions in the June 6, 1989 letter.

NRC Conclusion

NRC concludes based on its evaluation of the licensee's response that Basin has not provided an adequate basis for mitigation or retraction of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of \$5,000 should be imposed.

[FR Doc. 89-29062 Filed 12-12-89 8:45 am]

BILLING CODE 7530-01-81

[Docket No. 18000033 General License (10 CFR 150.20) EA 89-265]

Basin Testing Laboratory, Inc. dba Basin Services, Inc. Williston, North Dakota; Order To Show Cause Why License Should Not Be Suspended

Basin Testing Laboratory, Inc. (licensee) is the holder of North Dakota Materials License No. ND 83-16105-02 issued by the State of North Dakota on

January 3, 1985, and due to expire on December 31, 1989. The license authorizes the licensee to possess sealed radioactive sources in radiography devices and to conduct industrial radiography activities. 10 CFR 150.20 grants the licensee a general license to conduct these activities in Nuclear Regulatory Commission (NRC or Commission) jurisdiction (non-Agreement States).

II

Inspections of the licensee's activities within NRC jurisdiction were conducted on September 1 and October 5-6, 1988. The results of these inspections indicated that the licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 19, 1989. Three violations were categorized in the aggregate at Severity Level III and assessed a civil penalty in the amount of \$5,000. These involved: (1) Basin's permitting a radiographer's assistant, who had not completed a written test or field examination, to conduct radiographic operations while not in the presence of, and observed by, a qualified radiographer, a violation of 10 CFR 34.44; (2) Basin's failure to have informed NRC of its work in NRC jurisdiction from 1985 to 1988 by filing an NRC Form 241, a violation of 10 CFR 150.20; and (3) Basin's having provided NRC inaccurate information in its initial responses to the NRC's inspection findings, a violation of 10 CFR 30.9. In a February 22, 1989, response, Basin admitted the violations but sought to have the civil penalty mitigated or withdrawn. Based on its evaluation of Basin's arguments for mitigation, NRC is issuing, on the same date as this Order, an Order imposing upon Basin a civil penalty in the same amount as that proposed.

In its February 22, 1989, reply, which was provided as a sworn statement signed by Basin's President, William Cobban, Basin made the following statement in regard to the reason for its failure to have filed an NRC Form 241: "Basin was simply ignorant of the requirement for completing the form 241 prior to conducting activities in non-Agreement States." Because this statement was in conflict with information NRC had obtained from the North Dakota Department of Health regarding its inspections of Basin, NRC Region IV requested NRC's Office of Investigations (OI) to determine whether

the company's president made a false statement to the NRC and whether Basin intentionally failed to inform NRC of its activities in non-Agreement States.

In the Report of Investigation 4-89-006, completed in July 1989, OI determined that the President of Basin "knowingly and intentionally disregarded NRC regulations which he admitted he became aware of in June 1988." OI also determined that the previously mentioned statement in Basin's February 22, 1989, reply to NRC was false respect to licensed activities Basin conducted in non-Agreement States after June 1988 but before NRC's inspections in September and October 1988. The basis for OI's findings is that Basin was informed during an inspection by the North Dakota Department of Health in June 1988 and in July 1988 in a written inspection report that it had an obligation to notify NRC of its then-current activities in Wyoming, a non-Agreement State, an obligation with which Basin did not comply.

In addition, the licensee at the Enforcement Conference argued that it was in compliance with 10 CFR 34.44 because there was a radiographer on site; however, in its February 22, 1989 response, the licensee admits it knowingly allowed a radiographer's assistant to conduct radiographic operations in violation of NRC's requirements.

III

On the basis of the information discussed in Section II of this Order, NRC concludes that Basin committed willful violations of NRC requirements in: (1) Failing to inform NRC of its licensed activities in Wyoming (Laramie Pipeline, Laramie, Wyoming) which occurred from June to August 1988, and (2) providing a false statement to the NRC as to its knowledge of this requirement. In addition, the licensee in its February 22 response, admits it knowingly allowed a radiographer's assistant to conduct radiographic operations in violation of NRC requirements. NRC recognizes based on its February 28, 1989, inspection that Basin currently appears to be in compliance with the NRC's regulations. However, because of the past willful violations, the NRC has substantial questions as to whether there is reasonable assurance that the licensee will comply in the future with the Commission requirements, including providing complete and accurate responses to the Commission's duly authorized agents. Therefore, the NRC

requires that Basin Testing Laboratory, Inc., show cause why the general license authorized pursuant to 10 CFR 150.20 which allows Basin to conduct industrial radiography activities in locations under NRC jurisdiction should not be suspended until Basin Testing Laboratory, Inc. has taken sufficient actions to assure that licensed activities will be properly conducted and information provided the Commission and agents will be complete and accurate.

IV

In view of the above, and pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended (Act), and the regulations in 10 CFR parts 2, 30, 34 and 150, it is hereby ordered that:

Basin Testing Laboratory, Inc., doing business as Basin Services, Inc., which holds License Number ND 23-16108-02 issued by the state of North Dakota, show cause within 20 days of the date of this Order why its general license authorized by 10 CFR 150.20 to conduct industrial radiography activities within NRC jurisdiction should not be suspended.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. If the licensee fails to file an answer within the specified time, consents to this order, or fails to request a hearing in accordance with section VI below, and in the absence of any other request for a hearing, this order shall be final without further proceedings.

VI

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also should be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S.

Nuclear Regulatory Commission, Region IV, 601 Ryan Plaza Drive, Suite 2000, Arlington, Texas 76011. 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 the hearing. If a hearing is held, the issue to be considered shall be whether the licensee's general license under 10 CFR 150.20 should be suspended.

Dated at Rockville, Maryland, this 6th day of December 1989.

For the Nuclear Regulatory Commission,
Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89-29063 Filed 12-12-89; 2:45 am]

BILLING CODE 7550-01-0

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of OPM Form 1386, Applicant Race and National Origin Questionnaire Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a request to revise and reinstate the use of OPM Form 1386, Applicant Race and National Origin Questionnaire. OPM will use Form 1386, Applicant Race and National Origin Questionnaire, to collect data needed for determining impact of selection procedures and for complying with provisions of *Levano v. Newman*, Civil Action 79-0271, U.S. District Court for DC.

Approximately 60,000 will be processed annually; each form requires approximately 8 minutes to complete, for a total public burden of 8,000 hours.

For copies of this proposal, call Larry Dambrose, on (202) 693-6159.

Because OPM Form 1386 will be used in connection with alternative examinations for college entry positions developed in accordance with the *Levano* decree, which must be announced early in Calendar Year 1990 if registers are to be established in time to hire 1990 graduates, OPM is requesting expedited OMB clearance to the revised and reinstated OPM Form 1386 within 14 days.

DATE: Comments on this proposal should be received on or before December 12, 1989.

ADDRESS: Send or deliver comments to Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, N.W., Room 2225, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer on (202) 693-6817.

U.S. Office of Personnel Management,
Constance Berry Newman,
Director.

BILLING CODE 5325-01-0