

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
William J. Froehlich
Dr. Gary S. Arnold

In the Matter of

TEAM INDUSTRIAL SERVICES, INC.

(Order Imposing Civil Monetary Penalty)

Docket No. 30-35252-EA

ASLBP No. 20-964-02-EA-BD01

February 21, 2020

MEMORANDUM AND ORDER

(Granting Joint Motion to Approve Settlement and Terminating Proceeding)

Before the Board, in this enforcement proceeding, is the parties' joint motion to approve a settlement agreement.¹ Because the Board is satisfied that the terms of the parties' settlement reflect a fair and reasonable resolution of the issues in this proceeding, and that the public interest does not require adjudication of these issues, we grant the motion and terminate the proceeding.

I. BACKGROUND

On September 20, 2019, the NRC Staff issued an order to TEAM Industrial Services, Inc. (TEAM), imposing a civil monetary penalty of \$14,500, for a violation that involved moving a radiographic exposure device before ensuring that the device was in a fully locked position.² In requesting a hearing, TEAM admitted the violation, but challenged the NRC Staff's claim that

¹ Joint Motion to Approve Settlement Agreement and Terminate Proceedings at 1 (Feb. 12, 2020) [hereinafter Joint Motion].

² Order Imposing Civil Monetary Penalty - \$14,500 at 1 (Sep. 20, 2019) (ADAMS Accession No. ML19263E598).

two TEAM personnel engaged in deliberate misconduct.³ Rather, TEAM contends, an inadvertent mistake occurred and, absent deliberate misconduct, there can be no basis for the NRC Staff's order.⁴

In responding to TEAM's hearing request, the NRC Staff acknowledged TEAM's right to a hearing.⁵ However, with TEAM's concurrence, the NRC Staff moved to suspend issuance of a discovery schedule to permit the parties to engage in settlement discussions.⁶ The Board granted the motion.⁷

On February 12, 2020, the parties submitted their Joint Motion, together with the Settlement Agreement that is appended to this Memorandum and Order as Attachment 1.⁸

II. DISCUSSION

As more fully set forth in Attachment 1, the essence of the Settlement Agreement is that TEAM will undertake an employee training program and the NRC Staff will withdraw its current notice of violation and reissue one with less severity and with no finding of deliberate or willful misconduct. We address the parties' compromise in light of three principal considerations:⁹

³ Team Industrial Services, Inc.'s Answer and Request for Hearing at 1 (Dec. 12, 2019).

⁴ Id.

⁵ NRC Staff Answer to Request for a Hearing at 1 (Jan. 6, 2020).

⁶ Id.

⁷ Licensing Board Order (Granting Unopposed Motion to Suspend Discovery) (Jan. 7, 2020) at 1 (unpublished).

⁸ Joint Motion, Attach. 1, Settlement Agreement Between the U.S. Nuclear Regulatory Commission Staff and Team Industrial Services, Inc. (Feb. 12, 2020).

⁹ Neither party questions the Board's authority to approve their Settlement Agreement. Moreover, although 10 C.F.R. § 2.338(i) could possibly be read to confer such authority only "[f]ollowing issuance of a notice of hearing" (which has not yet occurred in this case), the regulatory history makes clear that the Board's authority to review and approve settlements is not so limited. See N. States Power Co. (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-15-30, 82 NRC 339, 344 n.25 (2015).

First, the Commission instructs us that “[t]he fair and reasonable settlement and resolution of issues proposed for litigation . . . is encouraged.”¹⁰

Second, in enforcement proceedings such as this, the Commission instructs that we “shall accord due weight to the position of the NRC staff when reviewing the settlement.”¹¹

Third, the Board recognizes that TEAM is represented by experienced and able counsel.

Given the Commission’s policy of encouraging settlements, and the absence of any reason to suspect that either party was at a relative disadvantage in their negotiations, we conclude that the Settlement Agreement is fair and reasonable.

We have also weighed the considerations for approving settlements that the Commission outlined in Sequoyah Fuels Corp.¹² As explained by the Commission, when determining whether a settlement is in the public interest, a Licensing Board should consider “(1) whether, in view of the agency’s original order and the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation.”¹³

None of these considerations prevents approval of the Settlement Agreement here. As discussed, the settlement appears to be a reasonable compromise between parties that are each ably represented. As set forth in Attachment 1, the Settlement Agreement contemplates a series of well-defined events that can be effectively implemented. There is no suggestion that this resolution of TEAM’s admitted one-time violation will jeopardize the public health and safety

¹⁰ 10 C.F.R. § 2.338.

¹¹ Id. § 2.338(i).

¹² Sequoyah Fuels Corp. and General Atomics (Gore, Okla. Site), CLI-97-13, 46 NRC 195, (1997).

¹³ Id. at 209.

in any way. And no other interested parties have sought to participate in this enforcement proceeding or likely could establish standing to do so.¹⁴

Finally, with some variations occasioned by the terms of the parties' settlement, the Board finds the Settlement Agreement to be in substantial compliance with the NRC's regulatory provisions concerning form and content.¹⁵

III. ORDER

The parties' Joint Motion is granted, and their Settlement Agreement is approved. The terms of the Settlement Agreement are embodied in this Memorandum and Order and shall have the same force and effect as an order made after full hearing.

¹⁴ See, e.g., Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983).

¹⁵ See 10 C.F.R. § 2.338(g)–(h). In future proceedings involving settlements, however, it would be preferable for counsel to expressly address these provisions.

This proceeding is terminated. Settlements approved by a Licensing Board are subject to the Commission's review in accordance with 10 C.F.R. § 2.341.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

/RA/

William J. Froehlich
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 21, 2020

Attachment 1

SETTLEMENT AGREEMENT BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION STAFF AND TEAM INDUSTRIAL SERVICES, INC.

On September 20, 2019, the Staff of the U.S. Nuclear Regulatory Commission (NRC) issued an Order imposing a civil monetary penalty of \$14,500 to TEAM Industrial Services, Inc. (TEAM) for a Severity Level III violation involving moving a radiographic exposure device prior to ensuring that the device was in the fully locked position.¹ On December 12, 2019, Team Industrial Services, Inc. (TEAM) filed a request for hearing.² The NRC Staff moved to suspend the issuance of a discovery schedule so that the parties could engage in preliminary settlement discussions,³ and the Atomic Safety and Licensing Board granted the motion.⁴

The parties subsequently engaged in settlement negotiations. As a result of those discussions, the parties agree to the following terms and conditions:

TEAM will implement the following corrective actions:

- (1) TEAM will develop and implement a computer-based training module on NRC regulations, including the NRC's prohibition of deliberate misconduct, consequences for violating NRC regulations, the incident underlying NRC Enforcement Action (EA-18-124), and lessons learned from the incident.
 - a. For purposes of assessing the effectiveness of the training, the training module will include a quiz immediately following an individual's completion of the training. A passing grade will be required for the training to be deemed effective.
 - b. All TEAM US radiographic personnel, including radiographic supervisors and managers (over 1,000 individuals) are required to complete the computer-based training module.
 - c. The computer-based training module will require approximately one hour of time to complete.
 - d. Within 6 months of the NRC's review of the training module in accordance with Paragraph (2) below, TEAM will complete such training (with appropriate exceptions for personnel unable to take the training, e.g., medical leave).
 - e. Team will retain a record of all personnel taking the initial training, including the quiz scores, for five years.

- (2) Within three months of issuance of an order from the Board approving the settlement, TEAM will submit the computer training module for NRC review to the Director, Division of Nuclear Materials Safety, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011. The NRC will provide any comments to TEAM on the training within 30 days from the date of the submittal of the computer training module. TEAM will consider the NRC's suggestions on the training content and incorporate those suggestions that TEAM agrees are appropriate and that do not extend the length of the module beyond one hour of time to complete.

¹ Order Imposing Civil Monetary Penalty - \$14,500, EA-18-124 (Sep. 20,2019) (ML19263E598).

² Team Industrial Services, Inc.'s Answer and Request for Hearing (Dec. 12, 2019) (ML19346H509).

³ NRC Staff Answer to Request for a Hearing at 1 (Jan. 6, 2020) (ML20006G100).

⁴ Order (Granting Unopposed Motion to Suspend Discovery) at 1 (Jan. 7, 2020) (ML20007E675).

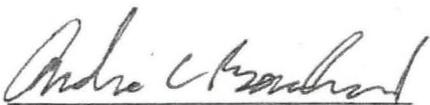
- (3) For three years following issuance of an order from the Board approving the settlement, TEAM will require all US radiographic personnel, including supervisors and managers, to take an annual refresher training program, which will include a quiz immediately following an individual's completion of the training. TEAM may use the same program described in Paragraph (1) above to fulfill the refresher training requirement described in this paragraph. TEAM will retain a record of all personnel taking the annual refresher training, including the quiz scores, for five years.
- (4) In addition to training already required under NRC regulations, TEAM will require that new US radiographic personnel, including supervisors and managers, who join TEAM within three years of issuance of an order from the Board approving of the settlement, take the computer-based training module described in Paragraph (1) above. Such new radiographic personnel (including supervisors and managers) will be required to take the training within three months of joining TEAM. Team will retain a record of all personnel taking this training, including the quiz scores, for five years. After three years, new US radiographic personnel, including supervisors and managers, will continue to receive all training required under NRC regulations.
- (5) Within two months of issuance of an order from the Board approving the settlement, TEAM will issue a one-time, company-wide safety bulletin to all of TEAM's US personnel then currently employed by TEAM, from a TEAM senior executive, emphasizing the importance of following procedures, maintaining compliance with regulatory programs, care when working with/around hazardous materials (including radioactive sources), and attention to detail. All of TEAM's US radiographic personnel, including supervisors and managers, will be required to acknowledge that they have reviewed the safety bulletin. Such acknowledgement can be electronic. TEAM will retain a record of the radiographic personnel acknowledgements for a period of five years.
- (6) TEAM agrees that the commitments made herein will transfer to any subsequent owner of TEAM, or relevant portion of TEAM's businesses.

In return for these commitments, the NRC will withdraw the prior Severity Level III Notice of Violation and Civil Penalty and reissue the violation as not greater than Severity Level IV with no deliberate misconduct or willful finding.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by TEAM of good cause.


George Wilson, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission

2/12/2020
Date


Andre C. Bouchard
Executive Vice President & Chief Legal Officer
TEAM Industrial Services, Inc.

2-11-2020
Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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TEAM INDUSTRIAL SERVICES, INC.) Docket No. 30-35252-EA
)
(Order Imposing Civil Monetary Penalty))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Memorandum and Order (Granting Joint Motion to Approve Settlement and Terminating Proceeding) (LBP-20-05)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Krupskaya T. Castellon]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of February 2020.