

11084
P
RELATED CORRESPONDENCE



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

NOV 19 1990

DOCKETED
USNRC

'90 NOV 21 P7:22

Tulsa Gamma Ray, Inc.
James C. Moss, President
1127 South Lewis Ave.
Tulsa, Oklahoma 74104

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
TULSA GAMMA RAY, INC.
Material License No. 35-17178-01
Docket No. 30-12319-CivP ASLBP No. 90-618-03-CivP

Dear Mr. Moss:

As ordered by the Licensing Board during the telephonic prehearing conference on November 8, 1990, this letter provides further explanation of the factors used by the NRC Staff in determining the civil monetary penalty imposed on Tulsa Gamma Ray, Inc. by NRC Order dated June 6, 1990.

The Commission's Enforcement Policy, found in 10 C.F.R. Part 2, Appendix C, governs enforcement actions taken by the NRC Staff. Section III, "Severity of Violations," explains the method of assigning the severity level. The section further provides that violations may be evaluated in the aggregate and a single severity level assigned for a group of violations, as was done in this case.

Five severity levels are delineated in Section III. These range from very significant (Level I) to minor (Level V). The Severity Level III category, which is at issue here, is assigned to violations, or a group of violations, determined to be cause for "significant concern". The five severity levels relate to eight separate activity areas, each of which is delineated, in sequence, in Supplements I through VIII of the Enforcement Policy. These Supplements contain examples for categorizing the severity levels of individual violations, as well as violations considered as a group. As stated in Section III, these examples are neither exhaustive nor controlling; rather, the determining factor is the significance of the violation or violations.

The violations at issue here encompass a number of activity areas: health physics (Supplement IV), transportation (Supplement V), and materials operations (Supplement VI). Accordingly, the examples in Supplements IV, V, and VI were used as guidance to assist in categorizing the violations.

Supplement IV, "Health Physics 10 C.F.R. Part 20", is considered as guidance by the NRC Staff in assigning the severity level of violations or groups of violations of 10 C.F.R. Part 20

9012050084 901119
NMSS LIC30
35-17178-01 PDR

0507

regulations, and was considered as guidance in weighing how to properly categorize Violations 2.a, 2.b, and 2.c. as to Severity Level.

Similarly, the Staff considered the guidance in Supplement VI, "Fuel Cycle and Materials Operations", pertaining to violations of the regulations in 10 C.F.R. Parts 30 - 39 and other regulatory requirements, such as license conditions imposed on licensees for the possession and use of byproduct material, in weighing how to properly categorize Violations 1.a and 1.b.

In the same fashion, the Staff considered the guidance in Supplement V, "Transportation", pertaining to violations of regulatory requirements for the transportation of licensed material, in weighing how to properly categorize Violations 4.a through 4.d.

The nine violations with which Tulsa Gamma Ray has been charged, [refer to the Order Imposing Civil Monetary Penalty of June 6, 1990], when considered as a group, are of significant regulatory concern in that they pertain to important safety concerns, and demonstrate a pattern of inattention to NRC regulatory requirements and compliance with same by the Radiation Safety Officer (RSO) and management above the RSO as the root cause of the violations.

The violations, in the aggregate, have been classified as Severity Level III under Supplement IV, Section C.12 (Violations 2.a - 2.c); Supplement V, Section C.5 (Violations 4.a - 4. d); and Supplement VI, Section C.8 (Violations 1.a - 1.b). These three provisions contain nearly identical language. Each refers to "a number of violations that are related. . .that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities." In this case, the NRC staff believes that all of the violations are related because they stem from the same root cause, namely, a pattern of lack of attention to compliance with NRC regulatory requirements and carelessness toward licensed responsibilities by the RSO and management above the RSO. This pattern evidences a breakdown in the licensed program and control of the licensed activities of Tulsa Gamma Ray, as is manifest in:

- The number and nature of violations identified during the inspection.¹

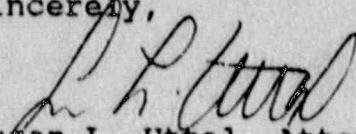
¹ The safety concerns raised by these violations relate to the following aspects of Tulsa Gamma Ray's operations: (1) conducting surveys, a basic radiation safety requirement (the failure to perform such surveys is the principal cause for overexposures in the radiography industry) (Violation 1a); (2) notice to the public of high radiation areas (Violation 1b); (3) concern about worker safety (Violations 2a, 2b, and 2c); and (4) safety precautions for transporting radioactive material and
(continued...)

- That the NRC had to identify the violations. The NRC expects licensee management to aggressively audit its program so that violations are self-identified and corrected.
- The fact that the licensee was specifically warned about the need for increased and improved management attention toward regulatory compliance in an NRC letter dated January 10, 1989; however, the situation had not improved by the time of the next NRC inspection on October 2-4, 1989 as specified in the Notice of Violation and Proposed Imposition of Civil Penalty issued December 29, 1989 (Notice).
- The recurring nature of some of the violations, which are identified as repeat violations in the Notice.
- The lack of management attention to compliance issues that NRC specifically raised in certain Information Notices sent to the licensee (specified in the letter that accompanied the Notice).

Therefore, considering the basic root cause, these violations were aggregated into a single Severity Level III category as violations reflecting a significant regulatory concern. This was not based on any single example in the supplements but, rather, as discussed above, was based on consideration of the examples in Supplements IV.C.12, V.C.5, and VI.C.8.

When a pattern of violations, such as those at issue here, is discovered during an inspection, the NRC has diminished assurance that the health and safety of workers and members of the public will be protected unless lasting remedial action is taken to correct the root cause problem (i.e., the lack of attention, on the part of the RSO and management above the RSO, to assure regulatory compliance). In sum, these violations have been categorized as Severity Level III because the licensee's performance, as identified during the inspection, represents a significant safety concern warranting escalated enforcement action to assure that the violations are corrected and do not recur.

Sincerely,


Susan L. Uttal, Attorney
Office of the General Counsel

cc: Service List

¹(...continued)

assurance that notice of the type of material being transported is provided to civil authorities and the public should an accident occur during the transportation (Violations 4a - d).