

U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of

Consolidated X-Ray Service Corporation)	License: 42-08456-02
P.O. Box 20195)	EA 82-45
Dallas, Texas 75220)	

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Consolidated X-Ray Service Corporation, P.O. Box 20195, Dallas, Texas, (the "licensee") is the holder of License 42-08456-02 issued by the Nuclear Regulatory Commission (the "Commission"). This license authorizes the use of sealed sources of byproduct material.

II

Inspections of the licensee's activities under the license were conducted on December 15, 1981 and January 18, 1982 at the licensee's facility located in Woodbridge, New Jersey, and on November 25, 1981 at a field site in Paulsboro, New Jersey. As a result of the inspections, it was determined that the licensee had not conducted its activities in full compliance with the conditions of its license and with the requirements of NRC regulations. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 12, 1982. This Notice stated the nature of the violation, the provisions of the Nuclear Regulatory Commission regulations and license conditions which the licensee had violated, and the amount of civil penalties proposed for the violation. An answer dated May 7, 1982 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument for mitigation or cancellation contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violation 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 (42 U.S.C. 2282, PL 96-295) and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay civil penalties in the total amount of Four Thousand Dollars 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 of the Office of Inspection and Enforcement.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing

within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceeding and, if payment has not been made by that time, the matters may be referred to the Attorney General for collection.

V

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the licensee violated the NRC regulation and license condition as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, as amended by this Order; and,
- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



Richard C. DeYoung, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this 6 day of August 1982

APPENDIX

EVALUATION AND CONCLUSION

The violation resulting in the civil penalty as set forth in the Notice of Violation (dated April 12, 1982) is restated and the Office of Inspection and Enforcement staff's evaluation and conclusion regarding the licensee's response (dated May 7, 1982) is presented.

Statement of Violation

10 CFR 34.23 requires that locked radiographic exposure devices and storage containers be physically secured to prevent tampering with or removal by unauthorized personnel.

Condition 17 of License 42-08456-02 requires that licensed material be used in accordance with the procedures in the application dated March 28, 1979. In the section of those procedures entitled "Transportation of Radiographic Devices" it requires that no device be moved unless all safety plugs are inserted, the device is locked, and the device is secured to the vehicle during transportation.

Contrary to the above, on January 15, 1982 a radiographer at a field site in Oil City, Pennsylvania transported a radiography device, containing 24 curies of iridium-192, which did not have the rear safety plug inserted and was not secured to the vehicle. In addition, although the device was locked, the key was left in, thereby defeating the purpose of the lock.

This is a Severity Level III violation (Supplement VI)
(Civil Penalty \$4,000)

Evaluation and Conclusion

The licensee admitted the violation as described but argued that the civil penalty should not be assessed on the following grounds: (1) a licensee cannot ensure that an employee who is trained in accordance with 10 CFR 34.31 and the licensee's procedures will not perform in a negligent manner and that no such means of preventive action can be finally effective; and (2) NRC is aware that an employer-licensee has limitations in the employer-employee relationship and has recognized that it is necessary to also go directly to the employee.

A licensee is liable for violation by its employees when those employees are acting within the scope of employment and are furthering the licensee's interest. As long as a corporation, company, or individual has an NRC license, it is responsible for any violations of NRC regulations caused by its employees, Atlantic Research Corp., CLI-80-7, 11 NRC 413 (1980). Section 34.2(b) of 10 CFR Part 34 states that radiographers are responsible to the licensee for assuring compliance with NRC regulations and the conditions of the license. Furthermore, in this case the NRC staff does not accept the argument that there is nothing else which the licensee can do in order to improve its assurance of compliance with NRC regulations. The licensee's letter of May 7, 1982, addressed its implementation of a program for refresher training. In addition to training, frequent effective unannounced audits of each radiographer in the field, with disciplinary measures for infractions as appropriate, can provide further assurance that radiographers are operating in compliance with requirements.

The licensee made reference to a Statement of Considerations which accompanied publication of a regulation in 46 FR 53647 (Oct. 30, 1981), attempting to show that the NRC recognizes "it is necessary to go directly to the radiographer for redress." However, the referenced regulation, 10 CFR 20.201(b), explicitly places the burden of responsibility on the licensee. Furthermore, 10 CFR 20.201(b) and the Statement of Considerations which accompanied it addresses concerns different from the ones addressed by the regulations which the licensee has violated.

The NRC staff does not accept the licensee's argument that a civil penalty in this case would serve no useful purpose. Here, a civil penalty will put this licensee, as well as other licensees and their employees, on clear and unambiguous notice that strict compliance with NRC regulations is required and that lasting and effective corrective action is required. The licensee has initiated some corrective action and the staff recognizes this. The staff recognizes that Consolidated X-Ray Service Corporation management personnel were not directly involved in the subject violation. If, to the contrary, there existed evidence of management involvement or a failure to implement immediate corrective action, the proposed civil penalty would have been higher.

After considering all the circumstances of this case, the staff has concluded that the amount of the civil penalty as originally proposed is appropriate.