

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. J-000004
RICHARDSON X-RAY, INC.)	License No. 0373-70 (CA)
Downey, California)	EA 93-201

ORDER IMPOSING CIVIL MONETARY PENALTIES

I

Richardson X-Ray, Inc. (Licensee or Richardson) is the holder of Byproduct Material License No. 0373-70 issued by the State of California. The license authorizes the Licensee to possess and use sealed sources in industrial radiographic exposure devices within the State of California. Pursuant to 10 CFR 150.20 and Richardson's California license, Richardson is authorized to possess and use licensed byproduct materials to perform industrial radiography in Non-Agreement States and areas under exclusive Federal jurisdiction.

II

An inspection by the Nuclear Regulatory Commission (NRC) was conducted on July 29 and 30, 1993, of the Licensee's activities that were performed in an area of exclusive Federal jurisdiction at Vandenburg Air Force Base, California. The results of the inspection determined that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated November 5, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice

in a letter dated November 30, 1993. In its response, the Licensee admitted the violations assessed civil penalties, but requested that the proposed civil penalties be remitted based on its corrective actions and its alleged inability to pay the proposed \$25,000 civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for remission contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee's timely and extensive corrective actions support a \$5,000 reduction of the \$25,000 civil penalties proposed in the November 5, 1993 Notice, based on mitigation consistent with the Enforcement Policy.

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 civil penalties in the full amount of Twenty Thousand Dollars (\$20,000) by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, USNRC, Washington, D.C. 20555. This payment shall be made within thirty (30) days of the date of this Order or in accordance with

the attached Promissory Note for Payment of the Civil Penalties (Note). If payment is to be in accordance with the attached Note, the Licensee within thirty (30) days of the date of this Order shall submit the signed Note in duplicate to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Mail stop 7H5, Washington, D.C. 20555.

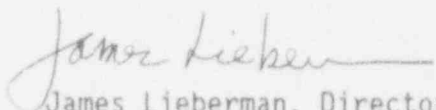
V

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. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, 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 admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 13th day of May 1994

APPENDIX

EVALUATIONS AND CONCLUSION

On November 5, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued to Richardson X-Ray, Inc. (Licensee) for violations identified during an NRC inspection conducted on July 29 and 30, 1993. The Licensee responded to the Notice in a letter, dated November 30, 1993. In its response, the Licensee admitted the violations but requested remission of the penalties, based on its corrective actions and its alleged inability to pay. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

The Licensee admitted the violations, but requested remission of the proposed civil penalties, in whole or in part, on the following bases:

1. In response to earlier violations of state radiography requirements, the State of California had required the Licensee to obtain the services of a consultant to provide radiation safety training and perform unannounced job site surveys of each radiographer. The cost of hiring the consultant was \$10,000.
2. Corrective actions taken by the Licensee after the Enforcement Conference included appointing a new RSO and terminating the prior RSO, and implementing a disciplinary policy for radiographic personnel.
3. The imposition of the civil penalties would cause a financial burden on the licensee to the point of possible forfeiture of its radioactive materials license.

NRC Evaluation of Licensee's Request for Mitigation

The NRC has evaluated the Licensee's response and has determined that an adequate basis was not provided for full remission or reduction of the civil penalties, however mitigation of the civil penalties is warranted based on the Licensee's corrective actions is warranted. In particular:

1. Earlier inspections by the NRC and the State of California had identified similar violations by Licensee personnel during the two years preceding the July 1993 NRC inspection. For example, in December 1991 Licensee was cited by the State of California for: (1) failure to perform surveys of the radiographic exposure device, (2) failure to recharge a pocket dosimeter at the beginning of the shift, and (3) failure to perform quarterly audits of radiographic personnel.

In April 1992, the Licensee was cited by the State of California for: (1) failure to wear personal monitoring devices, (2) failure to perform surveys of the radiographic exposure device, (3) failure to post the restricted area and high radiation area, (4) failure to maintain surveillance of the restricted area to prevent unauthorized access into the high radiation area, (5) failure to maintain records of surveys,

source usage, and training, and (6) failure to perform quarterly audits of radiographic personnel.

In May 1992, the State of California held an Enforcement Conference with the Licensee to discuss the violations identified during the April 1992 inspection. As a result of the Enforcement Conference the Licensee was required to hire a consultant to perform radiation safety training and audits of radiographic personnel. The Licensee's hiring of a consultant in May 1992 did not prevent recurrence of the same types of violations in July 1993.

Costs incurred by licensees to ensure compliance and implementation of their radiation safety programs are not considered in determining the base civil penalty, nor in escalating or mitigating the civil penalty.

2. The Licensee cites additional corrective actions in its response that include appointing a new RSO, terminating the prior RSO and implementing a disciplinary policy for radiographic personnel. The NRC recognizes that the Licensee took immediate corrective actions following the inspector's identification of the violations which included retraining of all radiographers and assistant radiographers, monitoring with regular unannounced job site audits, ensuring radiographers have the needed equipment prior to leaving for the job and ensuring that the radiographers are trained on all equipment.

The November 5, 1993 Notice stated that based on the repetitiveness of the violations, the Licensee's 1992 corrective actions were inadequate and that additional corrective actions needed to be considered to prevent further repetition. Given that the Licensee's more recent corrective actions were timely and extensive, these actions support a \$5,000 reduction of the \$25,000 civil penalties proposed in the November 5, 1993 Notice, based on mitigation consistent with the Enforcement Policy.

3. Based on its review of the financial information provided by the Licensee, the NRC determined that the Licensee possesses sufficient financial resources to pay the proposed civil penalties over a period of time, including interest. Accordingly, a payment schedule has been developed and is enclosed in the form of a Promissory Note in Payment of the Civil Penalties (Note). The Licensee, however, may pay the civil penalties in full, if it so desires.

In view of the above, the proposed civil penalties should not be reduced based on the Licensee's alleged inability to pay.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC concludes that the Licensee's timely and extensive corrective actions support a \$5,000 reduction of the \$25,000 civil penalties proposed in the November 5, 1993

Notice, based on mitigation consistent with the Enforcement Policy. Accordingly, civil monetary penalties in the amount of \$20,000 should be imposed.

Promissory Note in Payment of the Civil Penalties

Docket No. 15000004
 California License No. 0373-70
 EA 93-201

1. Obligation - For value received, Richardson X-Ray, Inc. (hereafter referred to as the Maker) promises to pay to the order of the U.S. Nuclear Regulatory Commission the principal sum of \$20,000 dollars, with interest accruing from July 1, 1994, at the rate of 3.00 percent per year. This note is being given for the purpose of refinancing and paying off an amount which constitutes the sum of the principal due and all unpaid interest and other charges owed to the United States on the civil penalties debt (\$20,000) which has been assigned the control number captioned above. The Maker hereby acknowledges and admits the validity and amount of that debt, which the principal sum stated in this note is intended to repay. The Maker further acknowledges that execution of this note constitutes a waiver of the right to contest the amount of the civil penalties and the underlying violations on which it is based under Section 234c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2282c.

2. Installments - This note is to be paid in monthly installments starting on July 1, 1994, plus interest on the unpaid principal balance, payable at the Nuclear Regulatory Commission, Washington, D.C., on or before the 1st day of the month, beginning on July 1, 1994 and continuing until either the principal sum and all interest and other charges assessed under the provisions of this note have been fully paid, or this note is considered to be in default under the provisions of paragraph 6 of this note. Payments will be mailed to the following address:

U. S. Nuclear Regulatory Commission
 Division of Accounting and Finance
 Licensee Fee & Debt Collection Branch
 Mail Stop MNBB 4503
 Washington, D.C. 20555

The following is a schedule of monthly installments exclusive of administrative charges and late-payment penalties:

<u>Due Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Admin. Charge</u>	<u>Installment</u>	<u>Balance</u>
Beginning Balance.....					\$20,000.00
July 1, 1994	\$1645.68	\$49.32	\$10.00	\$1705.00	\$18,354.32
August 1, 1994	\$1649.74	\$45.26	\$10.00	\$1705.00	\$16,704.57
September 1, 1994	\$1653.81	\$41.19	\$10.00	\$1705.00	\$15,050.76
October 1, 1994	\$1657.89	\$37.11	\$10.00	\$1705.00	\$13,392.87
November 1, 1994	\$1661.98	\$33.02	\$10.00	\$1705.00	\$11,730.90
December 1, 1994	\$1666.07	\$28.93	\$10.00	\$1705.00	\$10,064.82
January 1, 1995	\$1670.18	\$24.82	\$10.00	\$1705.00	\$ 8,394.64
February 1, 1995	\$1674.30	\$20.70	\$10.00	\$1705.00	\$ 6,720.34
March 1, 1995	\$1678.43	\$16.57	\$10.00	\$1705.00	\$ 5,041.91
April 1, 1995	\$1682.57	\$12.43	\$10.00	\$1705.00	\$ 3,359.34
May 1, 1995	\$1686.72	\$ 8.28	\$10.00	\$1686.75	\$ 1,672.62
June 1, 1995	\$1672.63	\$ 4.12	\$10.00	\$1705.00	

3. Administrative Charges - Administrative charges to cover the costs incurred by the United States in handling and processing past-due amounts will be assessed at the rate of \$10.00 for each payment more than thirty (30) days past due.

4. Late Payment Penalties - Late payment penalties will be assessed on any amount more than ninety (90) days past due, at the rate of six (6) percent per year.

5. Payment Crediting - The payments that the Maker makes under this note will be credited as of the date received by the U.S. Nuclear Regulatory Commission first to outstanding penalties and administrative charges; second to accrued interest; and third to the outstanding principal sum. Any payments that the Maker made to the United States on this debt during the period from the date from which interest accrues under this note (as specified in paragraph 1) until the effective date of this note (as specified in paragraph 11) shall be applied to the principal sum, interest, and other charges accruing under this note in accordance with the provisions of this paragraph.

6. Default, Acceleration, and Other Remedies - If any installment shall remain unpaid for a period of thirty (30) days or more, this note shall, at the option of the United States, be considered to be in default. In the event of default, the full amount of the principal sum, together with any accrued interest and other charges assessed under this note, less any payments actually received by the United States from the Maker, shall be due and payable in full immediately, without the need for further demands or notices to the Maker. Furthermore, in that event, the Maker agrees that the United States may exercise any collection options legally available to it, including, but not limited to, taking administrative offset, hiring a private debt collection agency, filing adverse credit reports to local and national credit bureaus, referring the Maker's account for legal action, and suspending or revoking any license or other privilege which the U.S. Nuclear Regulatory Commission has granted to the Maker.

7. Default Costs and Fees - In the event of default, the Maker agrees to pay all reasonable collection costs, court costs, and attorney's fees incurred by the United States as a result of the default and any appropriate collection actions taken by the United States.

8. Confess Judgement Provision - The Maker, if permitted by Controlling Law (as specified in paragraph 9), does hereby authorize and empower a United States Attorney, any of his assistants, or any attorney of any court of record, State or federal, to appear for the Maker and to enter and confess judgement against the Maker for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon the Maker in any suit on the obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering upon such judgement or in issuing any execution thereon; and to consent to immediate execution on said judgement. The Maker does hereby ratify and confirm all that said attorney may do by virtue hereof.

9. Controlling Law - Except where controlled by Federal law, all disputes concerning this note shall be controlled by the law of the jurisdiction in which the Maker is incorporated at the time this note is signed.

10. Changes - The provisions of this note may not be changed except by a written agreement which specifies the agreed-upon changes and which is signed by the Maker and an authorized representative of the United States.

11. Legal Effect - This note shall not be effective or legally binding upon the Maker or the United States until it has been first signed by the Maker and then countersigned by an appropriate official of the United States in the spaces indicated below. The United States will promptly provide the Maker a copy of this note after it has been countersigned.

12. Signatures and Certification - I, as the Maker, do hereby certify that I have read and understood the terms of this note.

SIGNED: This _____ day of _____, 1994.

Maker's Signature

Printed Name

Street Address

Taxpayer Identification Number

Telephone Number

I am an authorized official of the Maker and do certify that the Maker is incorporated in the State of California at the time this note is signed and that the signature above is that of an individual authorized to enter into a promissory note for the Maker.

SIGNED:

Signature

Printed Name

Address

As authorized representative of the United States, I hereby agree to the payment of this debt owed by the Maker to the United States under the terms of the installment agreement evidenced by this note.

COUNTERSIGNED:

Representative's
Signature

Representative's
Name

Representative's
Title and Agency

Date Countersigned: _____, 19____
U. S. Nuclear Regulatory Commission

Richardson X-Ray, Inc.

DISTRIBUTION:

PDR
SECY
CA
JTaylor, EDO
HThompson, DEOS
JLieberman, OE
ICallan, RIV
FWenslawski, WCFO
JGoldberg, OGC
LChandler, OGC
RBernero, NMSS
Enforcement Coordinators
RI, RII, RIII, RIV, WCFO
FIngram, GPA/PA
LHiller, OC
BHayes, OI
LTremper, OC
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EJordan, AEOD
NMamish, OE
PSantiago, OE
EA File (2)
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LTremper, OC 5/2/94 email

for

AD:OE	NMSS	RA:RIV	OGC	D:OE
PSantiago	CPaperfello	ICallan	JGoldberg	JLieberman
05/1/94	05/11/94	05/11/94	05/12/94	05/12/94

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