

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mississippi X-Ray Service, Inc.
Wesson, Mississippi

} Docket No. 150-00023
} General License No. 10 CFR 150.20
} EA 90-095

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Mississippi X-Ray Service, Inc. (Licensee) is the holder of Radioactive Material License No. MS-292-01 renewed by the State of Mississippi, an Agreement State, on May 23, 1989. The license authorizes the Licensee, in part, to possess and use sealed radioactive sources in various radiography exposure devices for the performance of industrial radiography in accordance with the conditions specified therein. The licensee is also the holder of a General License granted by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR 150.20 to conduct the same activity in non-Agreement States.

II

A special safety inspection of the Licensee's activities in Virginia (a non-Agreement State) was conducted on April 26, 1990. The results of this inspection 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 (Notice) was served upon the Licensee by letter dated June 26, 1990. 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 penalty proposed for the violations. The Licensee responded to the Notice by letters dated July 23, August 31, and September 17, 1990. In its

responses, the Licensee admitted the violations but requested mitigation of the proposed civil penalty based on the small size of the business and the hardship that the proposed civil penalty would impose.

III

After consideration of the Licensee's responses and the statements of fact, explanation, argument for mitigation contained therein, and financial information, the NRC staff 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 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 \$7,500 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. In the alternative, the civil penalty may be paid in 36 monthly installments that would include accrued interest.

If payment will be made in monthly installments, the licensee shall contact the Director, Office of Enforcement, within the 30 day period to arrange the terms and conditions of payment.

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 II, 101 Marietta St. N. W., Atlanta, Georgia 30323.

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 of the entire civil penalty or an arrangement for payment of the civil penalty in installments in accordance with Section IV above, 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 the hearing shall be:

Whether on the basis of the violations admitted by the Licensee, 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 9th day of December 1990

APPENDIX

EVALUATIONS AND CONCLUSIONS

On June 26, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC special safety inspection. Mississippi X-Ray Service, Inc. responded to the Notice on July 23, August 31, and September 17, 1990. The Licensee admitted the violations but requested mitigation of the proposed civil penalty based on the assertion that it would "impose a great hardship on the company." The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violations

10 CFR 150.20(a) grants a general license to any person holding a specific license from an Agreement State to conduct the same activity in non-Agreement States. The licensee holds specific Mississippi License No. MS-292-01, authorizing radiography, and was performing radiography in Virginia, a non-Agreement State.

10 CFR 150.20(b) provides, in part, that a person granted a general license under 10 CFR 150.20(a) is subject to the provisions of 10 CFR Part 34, Subpart B, when engaged in activities in a non-Agreement State.

- A. 10 CFR 34.41 requires that a radiographer or radiographer's assistant maintain direct observation of the radiographic operation to protect against unauthorized entry into a high radiation area as defined in 10 CFR Part 20, except where the high radiation area is equipped with a control device or alarm system, or locked.

Contrary to the above, on April 26, 1990, at a field site near Richmond, VA, neither the radiographer, nor his assistant, maintained direct surveillance of the radiographic operation to protect against entry into the high radiation area, and the high radiation area was not equipped with a control device or alarm system or locked. Specifically, neither the radiographer nor his assistant was observing activity in the uncontrolled area 20-25 feet from the radiographic exposure site, and the area became occupied by the inspector and a member of the public, both of whom could have entered the high radiation area without observation by the radiographer or his assistant.

- B. 10 CFR 34.42 requires, notwithstanding any provisions in 10 CFR 20.204(c), that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.203(b) and (c)(1).

10 CFR 20.203(b) requires that each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION RADIATION AREA."

10 CFR 20.203(c)(1) requires that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words "CAUTION HIGH RADIATION AREA."

Contrary to the above, on April 26, 1990, there was no posting of the radiation area and the high radiation area in which radiography was being performed.

- C. 10 CFR 34.43(b) requires, in part, the licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position.

Contrary to the above, on April 26, 1990, a licensee radiographer did not perform a survey after each of four radiographic exposures to determine that the sealed source had been returned to its shielded position.

- D. 10 CFR 150.20(b) (1) requires, in part, that any person engaging in activities in non-Agreement States under a general license shall, at least three days before engaging in that activity (i.e., radiography), file copies of Form-241, "Report of Proposed Activities in Non-Agreement States," and copies of its Agreement State specific license with the Regional Administrator for the Region in which the Agreement State that issued the license is located.

Contrary to the above, no Form-241 or copy of Mississippi License No. MS-292-01 was filed with Region II prior to commencement of radiography activities during April 1990 near Richmond, Virginia.

Summary of Licensee's Response

In its response, the Licensee did not contest the violations as stated in the Notice. However, the Licensee requested that the civil penalty be mitigated because the Licensee is a small family operated business and paying the proposed civil penalty would affect its ability to stay in business and safely conduct licensed activities. In response to the NRC request, the Licensee then submitted copies of business and personal income tax returns for 1986, 1987, and 1988, and a statement as to the taxable income for 1989.

NRC Evaluation of Licensee's Response

The NRC's Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty. The Licensee's financial information submitted in its September 17, 1990 letter reflects a business with a considerable volume of receipts and with taxable income for the past three years, and, therefore, does not provide evidence that imposition of the civil penalty in the proposed amount would significantly impact the Licensee's ability to stay in business. In light of this situation, the NRC staff does not see a need to mitigate the proposed penalty. Furthermore, the Licensee is being offered the opportunity to pay the penalty in installments.

NRC Conclusion

The NRC staff has carefully reviewed the financial information submitted by the licensee. The NRC has determined that in light of the licensee's ability to pay, the proposed civil penalty in the amount of \$7,500 should be imposed by Order.

DEC 19 1990

Mississippi X-Ray Service, Inc.

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