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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

JAN 7 1991
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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '91 JAN -8 P2:46

In Matter of)	
)	Docket No. 30-29086-SC
RHODES-SAYRE & ASSOCIATES,)	
INC.)	ASLBP No. 91-628-01-SC
)	
(Byproduct Material License)	
24-18959-02))	

OFFICE OF SECRETARY
INSURANCE & SAFETY
1-2204

NRC STAFF RESPONSE TO MEMORANDUM AND ORDER

I. INTRODUCTION

By Memorandum and Order (Schedule for Further Filings) dated December 13, 1990 the Atomic Safety and Licensing Board (the Board) asked the NRC staff (the Staff) to reply to two questions. The Staff response to these questions is provided below.

II. BACKGROUND

On April 15, 1987, Rhodes-Sayre Associates, Inc. (the licensee) was inspected by a representative of NRC Region III. On August 14, 1987, the NRC Office of the Controller sent to the licensee Invoice 1719A for payment, within thirty days, of the inspection fee of \$530 in accordance with 10 C.F.R. Part 170. A second notice of payment due was sent to the licensee on September 25, 1987, and a final notice of payment due was sent on October 14, 1987. Having received no payment, on September 19, 1990, the Acting Director of the Division of Accounting and Finance, Office of the Controller, pursuant to 10 C.F.R. § 2.202, issued an Order to Show Cause why the license issued to Rhodes-Sayre Associates, Inc. should not be revoked for non-payment of the inspection fee. The Order stated that if the licensee remitted the inspection fee plus applicable interest and penalties, the proceeding would be terminated, or the

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licensee could request a hearing. By letter dated October 11, 1990, the licensee requested a waiver of the inspection fee, requested a hearing, and admitted non-payment of the fee.

The Board's Memorandum and Order of December 13, 1990 asked the Staff to reply to the licensee's request for waiver of the fee and to state whether a Notice of Violation as described in 10 C.F.R. § 2.201 or its equivalent had been sent to the licensee prior to the Order to Show Cause.

III. DISCUSSION

A. The Request for Waiver of Fee

The license held by Rhodes-Sayre Associates, Inc., issued under 10 C.F.R. Part 30, allows the use of byproduct material at temporary job sites throughout the state of Missouri. The licensee requests a waiver of the inspection fee because the licensed material is used exclusively on projects for governmental units (cities and counties) and any ownership cost increases would necessarily be passed on to the government units. Letter from Richard G. Rhodes, P.E. to NRC Director of Accounting and Finance, October 11, 1990. The fees for licensing and inspections are set out in 10 C.F.R. Part 170. Licensees which are exempt from fees are listed in 10 C.F.R. § 170.11(a); there is no express exemption from fees for licensees which provide services to governmental units, although exemptions may be granted in specific situations pursuant 10 C.F.R. § 170.11(b). Section 170.12(g) of 10 C.F.R. provides for the assessment of inspection fees for all routine and non-routine inspections, which are payable upon notification by the Commission. Section 170.31(3)(p) indicates that the fee for a byproduct material license such as that held by Rhodes-Sayre Associates, Inc. is \$530 for routine and non-routine

inspections. Consequently, the assessment of \$530 for the inspection of Rhodes-Sayre Associates, Inc. was the correct application of 10 C.F.R. Part 170 to the license. Finally, Section 170.41 provides for enforcement actions in any case of nonpayment of prescribed fees.

Part 15 of the Commission's regulations provides debt collection procedures. This part authorizes suspension or termination of collection actions only in certain cases. 10 C.F.R. §§ 15.51-15.59. Section 15.37 provides for assessment of interest and late payment charges such as those imposed on the Licensee. Thus, the assessment of the inspection fee, interest and late payment charges due from the Licensee is in accordance with the regulations in 10 C.F.R. Parts 15 and 170. Moreover, even though 10 C.F.R. 170.11(b) provides for granting exemptions, when determined to be within the law and for the public interest, there is no reason provided by the Licensee which would warrant the granting of an exemption in this case. Affidavit of Ronald M. Scroggins, attached hereto.

B. Notice to Licensee

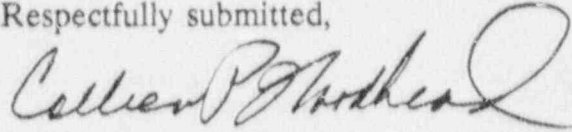
The Board questioned whether a Notice of Violation pursuant to 10 C.F.R. § 2.201 was issued or, alternatively, how this provision was satisfied in this case. Memorandum and Order at 2. The regulation, 10 C.F.R. § 2.201, specifically states that the Deputy Executive Director for Nuclear Materials, Safety, Safeguards, and Operations Support or a Regional Administrator or a designee of either must issue a Notice of Violation of the Atomic Energy Act, the regulations, or license conditions prior to taking any action to modify, suspend or revoke a license, or any other action for any alleged violation, except when the appropriate official finds that the public health, safety, or interest so requires,

or that the violation is willful. As stated in the Order to Show Cause, the Controller sent three notices of payment due to the Licensee (*see attached*) and the third notice was entitled "Final Notice." These notices comport with the intent of 10 C.F.R. § 2.201 to provide notice before taking action to suspend or revoke a license, in that a notice of payment due provides notice to licensees prior to institution of sanctions, and thereby satisfies the Administrative Procedure Act requirement of notice before imposition of sanctions. *See*, 5 U.S.C. § 558(c). Moreover, 10 C.F.R. § 2.202 authorizes the Director, Office of the Controller, and other agency officials to issue orders to show cause as appropriate. Furthermore, the Commission's regulations specifically address the action that may be taken when a licensee fails to pay a debt by its due date. 10 C.F.R. §§ 15.29, 15.21(b) and 170.41. The action provided for under these circumstances includes written notice of the amount due and where appropriate the issuance of an order to show cause why the license should not be suspended or revoked. *Id.* Therefore, in this case, the Office of Controller complied with the regulations and properly issued the Order to Show Cause for fees assessed in 1987, after the licensee failed to pay the required fees after three notices of payment due.

IV. CONCLUSION

For the reasons stated, the fees due from the Licensee have been properly assessed, are not waived, and prior notice(s) has been provided.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead".

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of January, 1991.

SEP 26 1987
~~SECOND NOTICE~~

OCT 14 1987
FINAL NOTICE

UNITED STATES
NUCLEAR REGULATORY COMMISSION
INSPECTION FEE INVOICE

INVOICE NUMBER
1719A

INVOICE DATE
08-14-1987

LICENSEE NAME AND ADDRESS
RHODES-SAYRE ASSOCIATES
PO BOX 365
BROOKFIELD MO 64628

LICENSE NUMBER
24-18959-02

<u>DATE OF INSPECTION</u>	<u>INSPECTION REPORT NO.</u>	<u>LIC. FEE CATEGORY</u>	<u>CODE</u>	<u>AMOUNT DUE</u>
4/15/87	8701	3P	AA905 INS-R	\$ 530.00

TERMS AND CONDITIONS ARE ATTACHED.

MAKE CHECKS PAYABLE TO :

U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF RESOURCE MANAGEMENT
DIVISION OF ACCOUNTING AND FINANCE
WASHINGTON D.C. 20555