

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
TRI-STATE ASSOCIATES, INC.
Woodbridge, Virginia

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Docket No. 030-30391
License No. 45-2496701
EA 90-142

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Tri-State Associates, Inc. (Licensee) is the holder of License No. 45-24967-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on March 16, 1988 and last amended on December 3, 1990. The license authorizes the Licensee to perform industrial radiography at temporary job locations in accordance with the conditions specified therein.

II

Safety inspections of the Licensee's activities were conducted on July 31 and August 1, 1990, at the Tri-State Associates, Inc. office in Woodbridge, Virginia and at a field radiography site in Washington, D.C. The results of these inspections 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 September 24, 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 October 15 and November 16, 1990. In its responses, the Licensee admitted the violations but requested mitigation or remission of the proposed civil penalty based on the fact that it is a small business with limited resources and finances and on the hardship that the proposed civil penalty would impose.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and 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. However, based on review of the Licensee's financial information, the staff has determined that the proposed penalty of \$7,500 should be mitigated to \$3,750.

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 \$3,750 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 is to 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 Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta St. NW, 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 issues 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


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 4th day of February, 1991

APPENDIX
EVALUATIONS AND CONCLUSION

On September 24, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during NRC safety inspections. Tri-State Associates, Inc. responded to the Notice on October 15, and November 16, 1990. The Licensee admitted the violations but requested mitigation of the proposed civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation

I. Violations Assessed a Civil Penalty

- A. 10 CFR 20.101(a) requires that the licensee limit the whole body radiation dose of an individual in a restricted area to one and one quarter rems per calendar quarter, except as provided by 10 CFR 20.101(b). 10 CFR 20.101(b) allows a whole body radiation dose of three rems per calendar quarter provided specified conditions are met.

Contrary to the above, the Licensee did not limit the whole body radiation dose of a radiographer working in a restricted area to the three rems per calendar quarter, although the remaining conditions of 10 CFR 20.101(b) had been met. Specifically, the individual received a whole body radiation dose of 3.620 rems in the Licensee's calendar quarter January 25 through April 24, 1990.

- B. 10 CFR 20.405(a) requires, in part, that each licensee make a written report to the Commission concerning each exposure to radiation in excess of any applicable limit in Part 20 or in the NRC license, within 30 days of the occurrence. 10 CFR 19.13(d) requires that the Licensee make a written report of such exposures to the individuals exposed no later than the transmittal to the Commission.

Contrary to the above, as of the July 31, 1990 inspection, a period exceeding 30 days from April 25, 1990, the Licensee had not made a written report to the Commission, or to the individual exposed, of an individual's whole body exposure to 3.620 rems, a dose in excess of the three rems per quarter allowed by 10 CFR 20.101(b). The pertinent calendar quarter extended from January 25, 1990 through April 24, 1990.

- C. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal or presence of radioactive materials or other sources of radiation under a specific set of conditions.

10 CFR 20.101(a) limits the whole body radiation dose of an individual in a restricted area to one and a quarter rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body radiation dose of three rems per calendar quarter provided specific conditions are met.

Contrary to the above, the Licensee failed to perform a survey associated with the loss of a film badge assigned to a radiographer in order to ensure that his whole body dose for the calendar quarter January 25 through April 24, 1990 did not exceed three rems. The conditions of 10 CFR 20.101 (b) had been met.

- D. 10 CFR 20.407(b) requires that certain licensees as specified in 10 CFR 20.408 submit to the Commission, within the first quarter of each calendar year, a report of exposures recorded for individuals under a licensed program for the preceding year.

Contrary to the above, as of August 1, 1990, the Licensee, which was subject to this requirement, had not submitted the required report for calendar years 1988 and 1989.

Summary of Licensee's Response

In its response, the Licensee did not contest the violations as stated in the Notice. However, the Licensee requested remission or mitigation of the civil penalty because the Licensee is a woman-owned small business with limited financial resources, and paying the proposed civil penalty would create a severe hardship which will produce an unhealthy financial condition. In response to an NRC request, the Licensee then submitted copies of business income tax returns for 1987, 1988, 1989 and an interim financial statement for the first six months of 1990.

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 November 16, 1990 letter reflects a small business with about four employees operating at a loss for the past three years, and therefore, provides evidence that imposition of the civil penalty in the proposed amount would significantly impair the Licensee's financial condition. In light of this situation, the penalty should be mitigated.

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 should be mitigated to \$3,750, equally assessed among the four violations.

FEB 04 1991

Tri-State Associates, Inc.

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