

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
CAMEO DIAGNOSTIC CENTRE, INC. ) Docket No. 030-29567  
Springfield, Massachusetts ) License No. 20-27908-01  
 ) EA 94-035

ORDER MODIFYING ORDER IMPOSING CIVIL  
MONETARY PENALTY

I

Cameo Diagnostic Centre, Inc. (Licensee) is the holder of a Byproduct Material License No. 20-27908-01 (License) originally issued by the Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 29, 1992. During the inspection, nine violations of NRC requirements were identified. A Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 1993. The Notice stated 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 on June 11 and July 23, 1993. In its response, the Licensee objected to the characterization of Violations I.A and

I.B as "willful", and to the classification of these violations at Severity Level III; protested the civil penalty assessed for Violations I.A and I.B; and requested remission of that penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff determined that the violations occurred as stated in the Notice, the Severity Level classification was appropriate, and the penalty proposed for Violations I.A and I.B should be imposed. Accordingly, the NRC issued an Order Imposing A Civil Monetary Penalty - \$1,750 on November 24, 1993. The Licensee responded in a letter dated December 17, 1993 and requested a hearing. On February 1, 1994, the Atomic Safety and Licensing Board (ASLB) designated to preside in this proceeding held a prehearing conference.

Violation I.B., as set forth in the Notice, cited the Licensee against 10 CFR 30.9(a) for a failure to provide to the Commission information that was complete and accurate in all material respects. During the February 1, 1994 prehearing conference, the ASLB ordered the Staff, among other things, to prepare a brief addressing whether a total failure to provide material information to the Commission can, as a matter of law, constitute a violation of 10 CFR 30.9(a).

III

The NRC staff has reconsidered whether Violation I.B. as stated in the Notice fully reflected the facts of this case. The original citation for Violation I.B. did not assert that a statement of the Licensee was inaccurate or incomplete, but rather, that the Licensee's omission constituted a violation of 10 CFR 30.9(a). After reevaluating the facts of this case, and statements made by the inspector and the Licensee, the staff is modifying Violation I.B based on an inaccurate statement made by the Licensee in answer to a question asked during a telephone call on November 12, 1992. This statement was confirmed in a letter issued the next day on November 13, 1992. Thereafter, during calls on November 19 and 25, 1992 the staff reiterated the need to obtain a license amendment before possessing material at the new location. However, the licensee did not correct the staff's understanding after receipt of the letter or during the November 19 and 25, 1992 telephone calls.

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 VIOLATION I.B OF THE NOTICE AND ORDER BE MODIFIED TO READ:

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the Licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, during a November 12, 1992 telephone conversation in response to a question from Region I as to whether the Licensee had licensed materials at its new address (155 Maple Street, Springfield, MA), the Licensee responded negatively. The licensee response was confirmed in a letter from NRC to the licensee dated November 13, 1992 which stated that it was the NRC "understanding that: ... 2. You [licensee] do not as yet possess any licensed radioactive material at this new facility." Therefore, the Licensee provided inaccurate information to the Commission in that it had possessed licensed materials at its new address. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

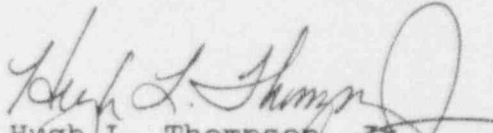
The Licensee shall respond to this modified Order within 20 days of the date of this Order by requesting that the NRC proceed with the Licensee's December 17, 1993 request for a hearing or by withdrawing its hearing request. The response to this Order shall be addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Atomic Safety and Licensing Board presiding over the proceeding on the December 13, 1993 hearing request and Counsel for the NRC staff in that proceeding at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If the Licensee withdraws its request for a hearing, payment of the civil penalty shall be made within 30 days of the date of this Order. If full payment of the civil penalty has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests proceeding with a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.A. of the Notice referenced in Section II above and Violation I.B. as modified in Section IV above, and
- (b) whether, on the basis of such violations, 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 15<sup>th</sup> day of February 1994

Cameo Diagnostic  
Centre, Inc.

DISTRIBUTION:

PDR  
SECY  
CA  
HThompson, DEDS  
JTaylor, EDO  
TMartin, RI  
RBernero, NMSS  
CFaperiello, NMSS  
LChandler, OGC  
JLieberman, OE  
JGoldberg, OGC  
Enforcement Coordinators  
RI, RII, RIII, RIV, RV  
FIngram, OPA  
DWilliams, OIG  
BHayes, OI  
EJordan, AEOD  
LTremper, OC  
PSantiago, OE  
EA File  
DCS

*Handwritten: Dan Kelly MARCO*

AD:OE	RA:RI	OGC	D:OE	DEDS
PSantiago	TMartin	<del>XXXXXXXXXX</del>	JLieberman	HThompson
02/15/94	02/15/94	02/15/94	02/15/94	02/15/94

Doc Name: G:\OECASES\94035REV.PS