

NOTICE OF VIOLATION

Photon Field Inspection, Inc.
Saginaw, Michigan

Docket No. 030-19660
License No. 21-21010-01
EA 89-243

As a result of the inspection conducted on April 6, 1989, and the subsequent investigations conducted by the U.S. Department of Labor (DOL) and the NRC Office of Investigations (OI) and in accordance with 10 CFR Part 2, Appendix C - General Statement of Policy and Procedure for NRC Enforcement Actions (1989), the following violations were identified:

1. 10 CFR 30.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities, including providing the Commission with information about possible violations of requirements imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. This section defines discrimination as including discharge and other actions that relate to the compensation, terms, conditions, and privileges of employment.

Contrary to the above, on April 7, 1989, the President of the Licensee terminated the employment of a radiographer who had performed licensed activities under the Photon Field Inspection license because the radiographer had provided information to the Commission about possible violations of Commission requirements.

This is a Severity Level I violation (Supplement VII).

2. 10 CFR 30.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, on April 6, 1989, the Licensee provided incomplete and inaccurate information to the Commission by denying that radiographic operations were performed since October 1988. A subsequent OI investigation revealed that on at least five occasions since October 1988 (November 21-23, and December 1, 1988, January 6, February 20, and March 20, 1989) radiographic operations were performed by the Licensee.

This is a Severity Level I violation (Supplement VII).

3. 10 CFR 34.27 requires, in part, that each licensee maintain current utilization logs, which shall be kept available for three years from the date of the recorded events, for inspection by the Commission, at the address specified in the license, showing for each sealed source: the make and model number, or a description of the radiographic exposure device or storage container in which the sealed source is located; the identity of the radiographer to whom assigned; and the plant or site where used and dates of use.

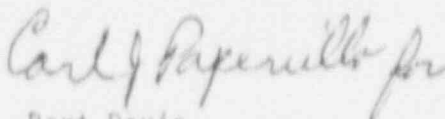
Notice of Violation

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Contrary to the above, the Licensee failed to maintain utilization logs at its facility for radiographic operations performed on at least eight occasions (October 5, 12 and 18, November 21-23, and December 1, 1988, January 6, February 20, and March 20, 1989).

This is a Severity Level 1 violation (Supplement VI).

A written reply to this Notice of Violation is not required since NRC Byproduct Material License No. 21-21010-01 has been terminated. However, a reply will be required in the future should a request to reinstate the license or an application for a new license be made to the NRC or an Agreement State.



A. Bert Davis
Regional Administrator

Dated at Glen Ellyn, Illinois
this 23rd day of September 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Photon Field Inspection Inc.
Saginaw, Michigan

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Docket No. 030-19660
License No. 21-21010-01
EAs 89-098 and 89-243

NOTICE OF TERMINATION OF LICENSE

I

Photon Field Inspection, Inc. (Licensee) is the holder of Byproduct Material License No. 21-21010-01 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 34. The Licensee's initial license was issued in 1982, authorizing possession of iridium-192 and cobalt-60 sealed sources incident to industrial radiography for use at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material. The owner of Photon Field Inspection, Inc. also owns and operates Bay Industrial Testing, (BIT) and, using the Licensee's sources, provided radiography services under the BIT name.

II

As a result of a special safety inspection conducted on April 6, 1989, in response to allegations concerning the Licensee's program, the NRC identified eight apparent violations and indications of a breakdown in the management control of the program. The violations involved the failure to: (1) obtain NRC authorization prior to facility relocation; (2) provide annual retraining to personnel; (3) perform quarterly audits; (4) perform quarterly inventories;

(5) calibrate survey instruments; (6) perform leak tests of sealed sources at required frequencies, (7) complete shipping papers for transport of sealed sources; and (8) maintain records of receipt of byproduct material.

Based upon the April 6, 1989 inspection findings, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on April 13, 1989, in which the Licensee agreed to maintain radiographic sources in storage and seek NRC approval prior to resumption of radiographic operations. On June 7, 1989, the NRC served on the Licensee a Notice of Violation and Proposed Civil Penalty (NOV) in the amount of \$7,500.00. By two letters dated July 26, 1989, the Licensee responded to the NOV denying two violations concerning the failure to conduct management audits and quarterly inventories. The other six violations were not denied.

Evaluation of the Licensee's July 26, 1989, response raised concern as to the reliability of two of the documents that the Licensee submitted as part of its denial of the two violations. Since the other violations were not denied and the Licensee had provided no basis for mitigation of the civil penalty, it was decided to withhold the two violations in contention and proceed with enforcement action. On October 30, 1989, an Order Imposing Civil Penalties in the amount of \$5,625.00 (\$7,500.00 - \$1,875.00 for the two violations withheld) was served on the Licensee. As the Licensee did not respond to the Order, the NRC Region III office telephoned the Licensee's President, Mr. Garinger, on December 6, 1989 to determine the Licensee's intention as to responding to the Order Imposing Civil Penalties. The Licensee's President stated he was

financially unable to pay the civil penalty and that he was going to request license termination and dispose of his radiography sources. He indicated that he was working with his attorney to prepare a formal letter to the NRC addressing the Order Imposing Civil Penalties and these issues.

III

During and subsequent to the April 6, 1989 inspection, additional allegations were received by the NRC pertaining to potential willful violations, including intentional records omissions. These issues were referred to NRC's Office of Investigations (OI) for investigation. In addition, on the day following the April 6, 1989 inspection, a radiographer employed by Bax Industrial Testing, who had used Licensee's sources in licensed activities, was terminated, allegedly for bringing safety concerns to the NRC. The worker filed a complaint with the U. S. Department of Labor (DOL) for employment discrimination. On May 17, 1989, following the DOL investigation, Licensee was notified by DOL that employment discrimination had occurred with regard to the termination of the employee. Although the Licensee responded to the NRC on October 3, 1989, denying employment discrimination and potential "chilling effect," the NRC has concluded, based on DOL findings, that employment discrimination as defined in 10 CFR 30.7(a)(1)(i) did occur.

On December 19, 1989, based on the results of the OI investigation into the willfulness issues, the NRC informed the Licensee that the OI investigation

determined that the Licensee provided false information to the NRC during the April 6, 1989 inspection in stating that no work had been done subsequent to October 1988, and also willfully violated 10 CFR 34.27 in failing to maintain utilization logs showing that licensed radiographic work had been conducted on at least eight occasions (October 5, 12, and 18, November 21-23, and December 1, 1988, January 6, February 20, and March 20, 1989).

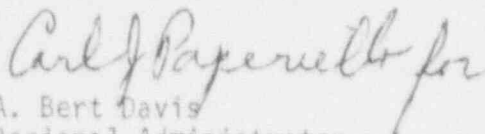
On January 11, 1990, the NRC Region III office called the Licensee's President to arrange a meeting to discuss the DOL and OI findings. He declined to meet with the NRC, and stated that arrangements were being made for disposition of the sources, and that a license termination request (NRC Form 314) and a letter to the NRC describing the company's intentions to comply with the NRC Order Imposing Civil Penalties would be forthcoming once the sources were transferred. The NRC Region III office has received confirmation that the sources have been transferred.

On February 27, 1990, the NRC Region III office received a letter from the Licensee's attorney requesting termination of Photon Field's NRC license and "all remaining penalties be excused and released." The reasons given were that Photon Field Inspection was unable to pay the penalties and that Photon Field Inspection is no longer an operating company. The remaining penalties are still outstanding and a collection action is pending before the Department of Justice in accordance with Section 234(c) of the Atomic Energy Act of 1954, as amended.

IV

If the Licensee had not requested termination of its NRC license, the NRC would have taken escalated enforcement action in accordance with the Enforcement Policy delineated in 10 CFR Part 2, Appendix C. Based on the seriousness of these violations and the Licensee's apparent inability to comply with NRC regulations, the NRC would have exercised its enforcement options to the fullest. Since these violations are categorized at Severity Level 1 and the Licensee's actions raised questions about trustworthiness and commitments to safety, the enforcement action would likely have included license revocation and/or civil penalties. In light of the Licensee's request of February 27, 1990 to terminate the license, the foregoing objectives can be achieved by granting the requested termination. Therefore, having met the requirements of 10 CFR 30.36 of the Commission's regulations, License No. 21-13367-01 is hereby terminated in accordance with Amendment No. 06, dated September 23, 1991. A civil penalty is not being proposed for the violations in the attached Notice of Violation and a response to this Notice of Violation is not requested because Byproduct Material License No. 21-13367-01 is terminated. However, should a new license be sought in the future by the President of Photon Field Inspection, a written response to this Notice of Violation would be required at that time.

FOR THE NUCLEAR REGULATORY COMMISSION


A. Bert Davis
Regional Administrator

Dated at Glen Ellyn, Illinois
this 23rd day of September 1991

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License number

21-21010-01

Docket or Reference number

030-19660

Amendment No. 06

Photon Field Inspection, Inc.
1705 Boxwood
Saginaw, MI 48601

In accordance with letter dated February 27, 1990 and NRC Form 314 signed March 15, 1990, NRC License Number 21-21010-01 is hereby terminated.



For the U.S. Nuclear Regulatory Commission

Date:

9/23/91

By

[Signature]

Materials Licensing Section, Region III