

18396

DOCKET NUMBER

BYPRODUCTS 30-30691-CIVP



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 10, 1997

DOCKETED
USNRC

'97 JUL 10 A9:48

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

MEMORANDUM TO: B. Paul Cotter, Jr.
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

FROM: *John C. Hoyle*
John C. Hoyle, Secretary

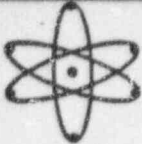
SUBJECT: REQUEST FOR HEARING SUBMITTED BY
BARNETT INDUSTRIAL X-RAY, INC.

Attached is a request for a hearing dated June 16, 1997, submitted by Barnett Industrial X-Ray, Inc. (Docket No. 30-30691) in response to an "Order Imposing Civil Monetary Penalty" issued by the NRC Staff on May 23, 1997. The Order was published in the Federal Register at 62 Fed. Reg. 30346 (June 3, 1997). (Copy Attached)

The request for hearing, as well as related background material, are being referred to you for appropriate action in accordance with 10 C.F.R. Sec. 2.772(j).

Attachments: as stated

cc: Commission Legal Assistants
OGC
CAA
OPA
EDO
NMSS
Lloyd Barnett
Barnett Industrial X-Ray



BARNETT INDUSTRIAL X-RAY, Inc.

To: Director, Office of Enforcement, U.S.N.R.C.
From: Loyd Barnett, Barnett Industrial X-Ray
Subject: Request for an Enforcement Hearing
Date: June 16, 1997

Sir:

In response to the "Order Imposing Civil Monetary Penalty" dated May 23, 1997,
I respectfully request an enforcement hearing as specified in said letter.

Thank you,

Loyd Barnett
President

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740-6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, telephone (301)713-7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1-AU-97-7). Professional conduct and legal mismanagement records accumulated in the office of the Judge Advocate General.

2. Department of Commerce, National Oceanic and Atmospheric

Administration (N1-370-96-8).

Nautical chart source standard files.

3. Department of Justice (N1-60-97-3). Case files relating to enforcement of the Americans with Disabilities Act of 1990.

4. Department of Justice (N1-118-97-1). Reading files maintained by U.S. Attorneys.

5. Department of Justice, United States Marshals Service (N1-527-97-8). Special assignments files.

6. Department of State, Bureau of Public Affairs (N1-59-97-11). "U.S. Foreign Affairs on CD-ROM" prepared by the Office of Public Communications.

7. Department of State (N1-59-97-16). Routine, facilitative, duplicative, or fragmentary records of Bureau of African Affairs, Bureau of Inter-American Affairs, Bureau of Intelligence and Research, and the Executive Secretariat.

8. Department of the Treasury, Office of the Comptroller of the Currency (N1-101-97-3). Bank examination working papers.

9. Consumer Product Safety Commission (N1-424-94-1). Case files maintained by the Office of General Counsel.

10. Federal Retirement Thrift Investment Board (N1-474-96-1, N1-474-96-3 through 5; N1-474-97-1 through 5). Comprehensive schedules for all offices except General Counsel.

11. Institute of Museum and Library Services (N1-288-97-1 and N1-288-97-2). Formula grant-related records and working papers to discretionary grants.

12. National Indian Gaming Commission (N1-220-97-6). Comprehensive schedule for textual and audiovisual records (substantive program records are designated for permanent retention).

13. Pension Benefit Guaranty Corporation (N1-465-95-4). Records of the Office of General Counsel.

14. President's Council on Physical Fitness and Sports (N1-220-97-5). Comprehensive records schedule.

Dated: May 27, 1997.

Michael J. Kurtz,

Assistant Archivist, for Record Services—
Washington, DC.

[FR Doc. 97-14403 Filed 6-2-97; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Time: 9:30 a.m., Tuesday, June 10, 1997.

Place: The Board Room, 5th Floor
490, L'Enfant Plaza, S.W., Washington,
D.C. 20594.

Status: Open.

Matters to be Discussed:

6794A Recommendations on Air Bags
and Occupant Restraint Use.

6595A Marine Accident Report:
Grounding of the Liberian Passenger
Ship STAR PRINCESS on Poundstone
Rock, Lynn Canal, Alaska, June 23,
1995.

News Media Contact: Telephone:
(202) 314-6100.

FOR MORE INFORMATION CONTACT: Bea
Hardesty, (202) 314-6065.

Dated: May 30, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97-14554 Filed 5-30-97; 2:48 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-30691 License No. 35-
26953-01 EA 96-602]

In the Matter of Barnett Industrial X-
Ray, Inc., Stillwater, OK; Order
Imposing Civil Monetary Penalty

I

Barnett Industrial X-Ray, Inc. (BIX or Licensee) is the holder of Materials License No. 35-26953-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 28, 1988, and last renewed on March 21, 1996. The license authorizes the Licensee to possess sealed radioactive sources for use in conducting industrial radiography activities in accordance with the conditions specified therein.

II

An inspection and investigation of the Licensee's activities was conducted October 3, 1996, through December 9, 1996, in response to a radiography incident which the Licensee reported to the NRC. The results of this inspection and investigation 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 February 24, 1997. The Notice described 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 in a letter dated March 11, 1997. In its

response, the Licensee admitted the violations, but requested that the civil penalty be remitted based on the circumstances of this case (see Appendix).

III

After consideration of the Licensee's response and the arguments for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice 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 \$4,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. 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 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 Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

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 (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If

payment 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.

Dated at Rockville, Maryland this 23rd day of May 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluation and Conclusions

On February 24, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection and investigation. Barnett Industrial X-Ray, Inc., (BIX or Licensee) responded to the Notice on March 11, 1997. BIX admitted the violations, but requested that the civil penalty be remitted based on the circumstances of this case. The NRC's evaluation of the Licensee's request and conclusions follow:

Summary of Licensee's Request for Mitigation

BIX stated that the employees who committed the violations were amply trained in radiation safety as well as proper radiography techniques and were audited by BIX more often than required by NRC regulations. BIX further stated that it feels the "two men in question took it upon themselves to disregard what they knew to be right and legal." BIX stated that 50 percent responsibility on the part of the company, as the penalty implies, is inequitable, and requested that the penalty be remitted in light of the circumstances of the case and BIX's actions in responding to and reporting the incident.

NRC Evaluation of Licensee's Request for Mitigation

The NRC recognizes that BIX's employees were fully trained and audited in accordance with NRC requirements. The NRC's Enforcement Policy, however, does not allow mitigation of a civil penalty for that reason because training and auditing are required by NRC regulations. While the NRC acknowledges that Licensee employees may have been audited more frequently than what is required by NRC requirements, it appears that such frequency was not sufficient to prevent the violations described in the Notice. NRC regulations set forth minimum auditing requirements. It is BIX's responsibility to control its activities, including auditing as necessary to ensure compliance. In that regard, it is noteworthy that BIX stated, in its March 11, 1997 response to the Notice, that it has "increased the number of jobsite audits by 100% per radiographic crew."

As to BIX's statement that the radiographers disregarded regulatory

requirements, the NRC considered the radiographers' conduct in its enforcement decision. Specifically, on April 15, 1997, the NRC issued a Confirmatory Order to the radiographer prohibiting him from engaging in NRC-licensed activities for a period of three years, and a letter to the assistant radiographer reminding him that similar misconduct in the future may lead to significant enforcement action against him.

Nevertheless, the radiographers' conduct on October 3, 1996, does not relieve BIX of its responsibility as a licensee of the Commission. As noted below, the Commission has left no doubt that licensees are responsible for violations of NRC requirements regardless of whether they occurred as a result of negligence or willful misconduct. BIX's argument that it should not be held fully responsible for the actions of its employees is contrary to NRC requirements, the Enforcement Policy, and past enforcement actions.

10 CFR 34.2, defines Radiographer as "any individual who performs or who, in attendance at the site where the sealed source or sources are being used, personally supervises radiographic operations and who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and the conditions of the license." (Emphasis added)

Section VI.A. of the Enforcement Policy states, in part, that "licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees."

The Commission formally considered the responsibility issue between a licensee and its employees in its decision concerning the Atlantic Research Corporation case, CLI-80-7, dated March 14, 1980. In that case, the Commission stated, in part, that "a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field." Therefore, the Licensee's understanding of its responsibility (i.e., 50 percent responsibility on the part of BIX) is incorrect. The NRC holds its licensees 100 percent responsible for licensed activities. To hold otherwise, would mean that BIX improperly transferred control of licensed material to its employees.

The NRC does not specifically license the management or the employees of a company; rather, the NRC licenses the entity. The licensee uses, and is responsible for the possession of, licensed material. The licensee is the entity that hires, trains, and supervises the employees. All licensed activities are carried out by employees of the licensee and, therefore, all violations are caused by employees. A licensee obtains the benefits of good employee performance and suffers the consequences of poor employee performance. Not holding the licensee responsible for the actions of its employees, whether such actions result from negligence or willful

¹ The proposed penalty was one half of the base value for a Severity Level II problem.

misconduct, is tantamount to not holding the licensee responsible for the use or possession of licensed material. If the NRC adopted this position, there would be less incentive for licensees to monitor their own activities to assure compliance because licensees could attribute noncompliance to employee negligence or misconduct.

With regard to BIX's argument that its actions in responding to and reporting the incident should be considered, the NRC notes that BIX's actions were considered in proposing the civil penalty. In fact, as stated in the NRC's February 24, 1997 letter, BIX's prompt voluntary reporting of the incident to the NRC and its prompt and comprehensive corrective actions formed the basis for proposing a civil penalty limited to one-half of the base value for a Severity Level II problem. Thus, the NRC believes that the circumstances of this case were appropriately considered in determining the proposed penalty amount.

NRC Conclusion

The NRC rejects BIX's arguments that it should not be held fully responsible for the violations, and believes that BIX's actions in responding to and reporting the incident were appropriately considered in determining the proposed penalty amount. The NRC concludes, therefore, that the Licensee has not provided adequate justification for a reduction or remission of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of \$4,000 should be imposed by order.

[FR Doc. 97-14394 Filed 6-2-97; 8:45 am]

BILLING CODE 7550-01-P

NUCLEAR REGULATORY COMMISSION

[PA 97-032]

In the Matter of Mr. Daniel R. Baudino; Order Prohibiting Involvement in NRC- Licensed Activities

I

Mr. Daniel R. Baudino was formerly employed by Bechtel Constructors Inc. (Bechtel) at the Commonwealth Edison Company's Dresden Nuclear Station (ComEd, Dresden, or Licensee) where he was granted unescorted access. ComEd holds Facility Licenses No. DPR-2, No. DPR-19, and No. DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. These licenses authorize ComEd to operate the Dresden Nuclear Station, Units 2 and 3, and possess and maintain but not operate Unit 1 (Dresden Station) located near Morris, Illinois, in accordance with the conditions specified therein.

II

In accordance with 10 CFR 73.56, nuclear power plant licensees must conduct access authorization programs

for individuals seeking unescorted access to protected and vital areas of the plant with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including criminal history. The decision to grant unescorted access authorization must be based on the licensee's review and evaluation of all pertinent information.

In order to be certified for unescorted access at Dresden Station as a contractor employee, Mr. Baudino completed Dresden Station forms entitled "Personal History Questionnaires for Unescorted Access" (personal history questionnaires) on several occasions, including January 16, 1992, and October 5, 1992. On each of these forms, Mr. Baudino indicated and certified with his signature that he had never been arrested and convicted of a criminal proceeding for the violation of any law, regulation or ordinance, including driving under the influence or traffic offenses other than non-personal injury traffic or parking offenses. Mr. Baudino was subsequently granted unescorted access to the Dresden station on each occasion, based in part on his representations on the personal history questionnaires that he had no criminal history. Mr. Baudino's unescorted access to the Dresden Station was revoked for cause by the Licensee on December 5, 1995, for other reasons than accurately completing his personal history questionnaire.

During an investigation by the NRC Office of Investigations (OI) at the Dresden Station, Mr. Baudino was interviewed by OI on March 14, 1996. During the interview, Mr. Baudino was shown copies of the personal history questionnaires referenced above and acknowledged that the signatures on each of the forms were his.

Mr. Baudino also acknowledged that his marking of an "x" in the "no" block under the question regarding criminal history indicated that he had not been arrested or convicted of any offenses. When confronted with the arrest records that OI had obtained from the Grundy County, Illinois, Circuit Court, which revealed that Mr. Baudino had multiple arrests and convictions during the period of 1987 to October 5, 1992, Mr. Baudino admitted they were records of his arrests. Mr. Baudino stated that he thought the questions pertained to federal arrests and convictions when asked why he falsely reported on the forms that he had no criminal history.

In a report issued on September 23, 1996, OI concluded that Mr. Baudino deliberately falsified his criminal history information on the personal history questionnaires in order to gain unescorted access to the Dresden Station.

III

Based on the above, the NRC has concluded that Mr. Baudino engaged in deliberate misconduct on January 16, 1992, and October 5, 1992, by deliberately falsely stating on the personal history questionnaires he signed on those dates that he had no criminal history. Mr. Baudino's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately providing information to a licensee or contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. The information that Mr. Baudino provided regarding his criminal history was material because, as indicated above, licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Baudino's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations, and his doing so on multiple occasions raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Baudino were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Baudino be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if Mr. Baudino is currently involved with another licensee in NRC-licensed activities, Mr. Baudino must immediately cease such activities, and inform the NRC of the name, address and telephone number of

BARNETT INDUSTRIAL X-RAY
P.O. BOX 1991
STILLWATER, OK. 74076

MARCH 11, 1997

Director, Office of Enforcement
U. S. Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX. 76011-8064

Subject: Reply to a Notice of Violation

Sir,

This letter is in response to the Notice of Violation dated February 24, 1997.

In reference to Violation A of the above named notice, Barnett Industrial X-Ray (BIX) admits that the radiographer's assistant did not perform a physical survey after a radiographic exposure to determine that the source was in a shielded position. The reason for this action, or lack thereof, can only be ascertained by BIX management as a lackadaisical attitude on the part of the assistant toward the training that was provided to him and all other BIX employees at the time of employment and reiterated on a regular basis afterwards.

Because of this situation, BIX has increased the number of jobsite audits by 100% per radiographic crew sent on to a job site. As a result of this increase, it appears at this time that the men have obtained a more serious awareness of the use of physical surveys.

To avoid the possibility, or at the very least minimize the possibility of this type of attitude recurring, BIX has imposed the following in-house ruling:

Any radiographer who is observed not:

- (a). Performing physical surveys after each and every radiographic exposure;
- (b). Wearing ALL required Personal monitoring equipment (film badge, dosimeter) or Rate Alarm Meters;
- (c). Being present while any source manipulation is being performed by the assistant (unless the assistant is a certified level II or greater),

May be docked \$1.00 per hour for a period of at least 2 weeks; and will receive a written warning to be placed in his file for 90 days. A written warning will be imposed as a minimum punishment. Furthermore, if a radiographer's assistant is observed not following ALL of the above named procedures, he AND the radiographer will be penalized.

BIX assures the Director that all of the above mentioned rules and procedures are in effect, and have been since a mandatory company wide meeting which took place after the incident in question.

In reference to Violation B, BIX admits that neither the Radiographer or the radiographer's assistant was wearing the required personal monitoring equipment or an alarm rate meter at the time of the incident. There is no reason except for a relaxed attitude toward the rules on the part of both men. The 2 men involved in this incident have been terminated as a result of this attitude and their actions concerning this incident. As for remaining Radiographers and assistants, all of the steps mentioned in reference to Violation A are now in effect.

In reference to Violation C, BIX admits to the best of our knowledge, that the radiographer's assistant operated an exposure device without the supervision of the radiographer. It is the position of BIX that the radiographer had the proper training and knowledge of all applicable regulations, but failed to utilize this training or knowledge. Because of this incident, all radiographers and assistants have gone through a mandatory retraining program which was provided by BIX management. In addition to this retraining, all radiographers may be penalized if their assistant is observed performing work with an exposure device without the personal supervision of the radiographer. This penalty may include a suspension of up to 2 weeks, or possible termination if it is determined that the violation was of a willful nature.

BIX would like to reiterate that all of the changes in procedure mentioned above are now in effect. If I can be of any further assistance, please feel free to contact me at your convenience. All of the above is submitted under oath or affirmation.

Thank you.



Lloyd Barnett

President/RSO

cc: James Lieberman, Region IV Office

BARNETT INDUSTRIAL X-RAY
P.O. BOX 1991
STILLWATER, OK. 74076

MARCH 11, 1997

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX. 76011-8064

Subject: Answer to a Notice of Violation

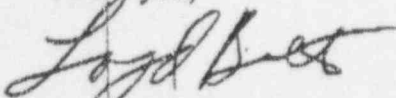
Sir,

As per 10 CFR 2.205, I am submitting the following statement under oath or affirmation.

In the attached "Reply to a Notice of Violation", Barnett Industrial X-ray (BIX) has admitted to violations committed by two former employees on October 3, 1996. BIX would like to state at this time that all employees, including the two in question, are amply trained in the area of Radiation Safety as well as the proper techniques of Radiography. This training is well documented and maintained in each employee file. In addition to substantial training, all radiographic crews sent by BIX to perform radiography are audited in excess of NRC regulations and have always been. We feel that the two men in question took it upon themselves to disregard what they knew to be right and legal. As a result of the incident in question, these audits have been increased by 100% per radiographic crew.

Although BIX does assume a reasonable amount of responsibility as the license holder, we feel that 50% responsibility, as the penalty implies, is not an equitable amount due to the circumstances involved. As was stated in the Notice of Violation, we did act promptly and efficiently in all phases of the incident. Therefore, we respectfully request that due to mitigating circumstances, the penalty imposed be remitted.

Thank you,



Loyd Barnett
President/RSO

cc: Janet Lieberman, Region IV Office



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

February 24, 1997

EA 96-502

Mr. Loyd Barnett, President
Barnett Industrial X-Ray, Inc.
P.O. Box 1991
Stillwater, Oklahoma 74076

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$4,000 (NRC Inspection Report No. 030-30691/96-01; NRC Investigation
Report 4-96-054)

Dear Mr. Barnett:

This refers to the matters discussed with you and Mr. Todd Barnett at a predecisional enforcement conference conducted on January 6, 1997 in the NRC's Region IV office. The conference was conducted to discuss apparent violations related to an October 3, 1996 incident in Ponca City, Oklahoma involving radiography personnel employed by Barnett Industrial X-Ray (BIX). The apparent violations related to this incident, and the results of an investigation conducted by the NRC's Office of Investigations to determine whether the violations were willful, were described in an inspection report issued on December 23, 1996. As noted in the inspection report, BIX conducted a prompt investigation and reported the incident to the NRC by telephone on the morning that it occurred.

The October 3, 1996 incident involved a BIX radiographer and radiographer's assistant who were dispatched to an oil refinery to perform radiography on two welds. After the second of two radiographic exposures, the radiographer's assistant was in the process of disassembling the radiography equipment when he discovered that the radioactive source in the exposure device was not fully retracted to its shielded position. This would have been discovered earlier had these individuals taken the required steps of wearing alarm ratemeters and conducting a radiation survey prior to disassembling the equipment. Based on after-the-fact evaluations, this incident is not believed to have resulted in radiation exposures above the NRC's limits. That notwithstanding, there were serious violations of NRC requirements associated with this incident that had the potential to result in far more serious radiation exposures.

As a result of the information developed during the NRC's inspection and investigation and the information that you provided during the conference, the NRC has determined that the following three willful violations of NRC requirements occurred: 1) a failure of both individuals to wear personal radiation monitoring devices, including an alarm ratemeter; 2) a failure to conduct a survey using a survey instrument to assure that the source had been returned to its shielded position; and 3) a failure on the part of the radiographer to adequately supervise his assistant. Compliance with these requirements would have

prevented this incident from occurring. It is our belief that these individuals deliberately chose not to utilize personal dosimetry devices because they were pressed for time and that the radiographer demonstrated careless disregard for the requirement to supervise his assistant.

Individually, each of these violations is of significant regulatory concern and could have been classified at Severity Level III because they circumvented three separate and distinct safety barriers that are designed to protect workers and members of the public from inadvertent and potentially significant radiation exposures. Therefore, given the seriousness of the three violations which involved basic radiation protection, the willfulness associated with the violations, and the fact that they were related to an actual event, these violations are of very significant regulatory concern and, therefore, have been collectively categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 as a Severity Level II problem.

The NRC acknowledges BIX's actions in response to this incident and subsequent corrective actions, including: 1) a prompt investigation of the incident to assess radiation exposures; 2) prompt disciplinary action against the involved individuals; 3) prompt notification to the NRC; 4) a mandatory safety meeting with all employees to discuss this incident and the violations identified by BIX; 5) increased audits of radiography personnel; and 6) development of a formal disciplinary program and the communication of that program to employees. In addition, based on our inspections, it appears that BIX has maintained a radiation safety program in compliance with NRC requirements and with an appropriate emphasis on safety. Nonetheless, your radiographer and radiographer's assistant in this case committed serious violations which raise a concern about the effectiveness of BIX's control of licensed activities.

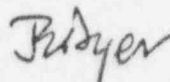
In accordance with the Enforcement Policy, a Severity Level II violation should normally result in a civil penalty regardless of identification and corrective action. The base value for a Severity Level II problem is \$8,000. However, given the circumstances of this case, the NRC is exercising enforcement discretion in accordance with Sections VII.A.1 and VII.B.6 of the Enforcement Policy by mitigating the civil penalty to \$4,000. This amount is less than the base value for a Severity Level II problem given BIX's action in voluntarily and promptly informing the NRC of the results of its preliminary incident investigation, as well as BIX's initiative in taking prompt and comprehensive corrective action.

Therefore, to emphasize to you and to other licensees: - 1) the responsibility of ensuring that employees meet basic radiation safety requirements, and 2) the significance of the willful violations of safety requirements associated with the October 3, 1996 incident, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$4,000. Actions against the individuals involved in this incident will be considered separately.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

Sincerely,



J. E. Dyer
Acting Regional Administrator

Docket No. 030-30691
License No. 35-26953-01

Enclosure: Notice of Violation and
Proposed Imposition of Civil Penalty

cc w/Enclosure:
State of Oklahoma

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Barnett Industrial X-Ray, Inc.
Stillwater, Oklahoma

Docket No. 030-30691
License No. 35-26953-01
EA 96-502

During an NRC inspection conducted October 3 through December 9, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular problem and associated civil penalty is set forth below:

- A. 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 exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and the source guide tube.

Contrary to the above, on October 3, 1996, a radiographer's assistant did not perform a survey after a radiographic exposure to determine that the sealed source had been returned to its shielded position. (01012)

- B. 10 CFR 34.33(a) requires, in part, that the licensee not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct-reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter.

Contrary to the above, on October 3, 1996, neither a radiographer nor his radiographer's assistant wore a direct-reading pocket dosimeter, alarm ratemeter, and a film badge or thermoluminescent dosimeter while conducting radiographic operations. (01022)

- C. 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) the radiographer's personal presence at the site where sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the above referred-to operations.

Contrary to the above, on October 3, 1996, a radiographer's assistant operated a radiographic exposure device without the personal supervision of a radiographer at the Conoco Oil refinery in Ponca City, Oklahoma. Specifically, the supervising radiographer failed to observe the assistant

retract a sealed source after a radiographic exposure was completed. The radiographer also failed to observe the assistant as he approached the device, retrieved the film, and attempted to disassemble the equipment. As a result a radiographer failed to notice that the assistant did not perform a survey of the exposure device and had not secured the sealed source assembly inside the exposure device in a fully shielded position. (01032)

These violations represent a Severity Level II problem (Supplement VI).
Civil Penalty - \$4,000

Pursuant to the provisions of 10 CFR 2.201, Barnett Industrial X-Ray, Inc., (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated at Arlington, Texas,
this 24th day of February 1997

bcc w/Enclosure:

PDR

IE 14

Enforcement Coordinators, RI, RII, RIII

SECY

CA

HThompson, EDO (O-17G21)

EJordan, DEDO (O-17G21)

JLieberman, OE (O-7H5)

LChandler, OGC (O-15B1B)

JGoldberg, OGC (O-15B1B)

CPaperiello, NMSS (T-8A23)

OE:EA (2) (O-7H5)

WUOCS

JGilliland, OPA (O-2G4)

PLohaus, OSP (O-3D23)

HBell, OIG (T-5D28)

GCaputo, OI (O-3E4)

DCool, NMSS (T-8F5)

OE:ES (O-7H5)

LTremper, OC/LFDCB (T-9E10)

RIV DISTRIBUTION:

E-mail to:

OEMAIL

SJCcollins(SJC1)

BHenderson(BWH)

CHackney(CAH)

RScarano(RAS1)

LHowell(LLH)

CCain(CLC)

BSpitzberg(DBS)

RWeise(RXW)

MHammond(MFH2)

WBrown(WLB)

LWilliamson(ELW1)

RLeonardi (RAL)

FWenslawski(FAW)

Copies to:

RIV Files

NMI&FCDB File

MIS Coordinator

PAO(Henderson)

GSanborn>EAFile

RSLO(Hackney)

LJCallan>Reading File

Handwritten notes above table: "H document", "AS per", "X", "1/14/97", "T-11"

OE <i>(NM)</i>	NMSS <i>2/5/97</i>	RA:RIV	D:OE	DEDC <i>2/14</i>
NMamish	DCool	JCallan	JLieberman	EJordan
1/31/97	1/97	2/5/97	2/16/97	1/97

Handwritten note below table: "2/14/97"

Doc. Name: G:\OECASES\96502REV.NM