

the Licensee provided accurate information to the NRC as required by 10 CFR 30.9, the NRC staff could have focused its review on the qualifications of the unauthorized physicians and issued a separate license amendment on an expedited basis to ensure that regulatory compliance was maintained while patient teletherapy services continued. Under these circumstances, the NRC staff believes that the timeliness of the processing of the license renewal should not be a mitigating factor in assessing the civil penalty amount.

Accordingly, based on the Enforcement Policy in effect at the time, a \$5,000 civil penalty was appropriate.

The NRC notes that its Enforcement Policy was revised on June 30, 1995 (60 FR 34381). In applying the revised NRC Enforcement Policy, the same civil penalty of \$5,000 would be warranted given the willful nature of the violation; the fact that it was identified by the NRC; consideration of the Licensee's good corrective actions; and the exercise of discretion as warranted under the circumstances, including the facts that the violation represents a recurrence (i.e., directly repetitive) of an earlier violation and the Licensee missed a number of opportunities to correct it. Therefore, application of the new policy results in the same civil penalty being assessed.

#### *NRC Conclusion*

The NRC has concluded that the Licensee did not provide an adequate basis for abatement or mitigation of the civil penalty. Accordingly, the proposed civil penalty in the amount of \$5000 should be imposed.

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[IA 95-029]

#### **Steven Cody; Order Prohibiting Involvement in NRC-Licensed Activities (Immediately Effective)**

##### **I**

From approximately January 1990, to April 24, 1993, Steven Cody was employed as a radiographer by Mid American Inspection Services, Inc. (Mid American Inspection or Licensee). Mid American Inspection holds Byproduct Material License No. 21-26060-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on June 13, 1989. The license authorizes the use of iridium-192 in sealed sources for industrial radiography and depleted uranium as solid metal to shield exposure devices and source changers. Licensed material is authorized for use at the facility located at 1206 Effie Road, Gaylord, Michigan, and at job sites located throughout the United States where the NRC maintains jurisdiction. The license was due to expire on August 31, 1994, but is under timely renewal.

##### **II**

During the period of approximately October 1992 to April 1993 the Licensee performed industrial radiography on a gas line project near Kalkaska, Michigan. Mr. Steven Cody was a radiographer assigned to the project. As a radiographer, Mr. Cody was responsible for compliance with the Commission's regulations, including the personal supervision of any radiographic operation performed by radiographer's assistants working with him. 10 CFR 34.2 defines a radiographer's assistant as any individual who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

On May 13, 1993, the Licensee received information that indicated that Mr. Cody routinely failed to supervise radiographer's assistants during radiographic operations at the Kalkaska, Michigan, project. On May 14, 1993, the Licensee notified the NRC Region III office of the potential violation.

The NRC Office of Investigations (OI) investigated the matter. Sworn testimony of radiographer's assistants confirmed that Mr. Cody was not always present when the assistant performed radiographic operations. The testimony indicated that at times Mr. Cody left the work site leaving the radiographer's assistant alone to conduct radiographic operations. Mr. Cody admitted to OI in a sworn statement that he sometimes left the job site while an assistant conducted radiographic operations. Mr. Cody stated to OI and during the enforcement conference that he would only leave the job site at the assistant's suggestion that the remaining radiographic operations could be performed without any assistance from Mr. Cody.

OI developed information that indicated that Mr. Cody was familiar with the NRC requirement to have a radiographer present whenever a radiographer's assistant performed radiographic operations.

Mr. Cody's failure to supervise radiographer's assistants during radiography operations is a violation of 10 CFR 34.44, "Supervision of radiographers' assistants." 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, 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 the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the requirements of 10 CFR 34.44, Mr. Cody was not personally present on more than one occasion at the site where sealed sources were used. Therefore, he did not have the ability to give immediate assistance if required and he could not watch the assistant's performance of radiographic operations.

Furthermore, 10 CFR 30.10 states that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: (1) Would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or constitutes a violation of a procedure of a licensee.

Mr. Cody's failure to be present during radiographic operations conducted by a radiographer's assistant is a violation of 10 CFR 34.44 and his violation of that requirement is considered deliberate because Mr. Cody was fully aware of the requirements of 10 CFR 34.44, yet he intentionally elected to leave the job site.

##### **III**

Based on the above, the NRC concludes that Steven Cody engaged in deliberate misconduct that caused a violation of 10 CFR 34.44 when he failed to be personally present whenever a radiographer's assistant under his supervision performed radiographic operations. The NRC must be able to rely on its licensees and the employees of licensees, to comply with NRC requirements, including the requirement that radiographic operations cannot be conducted by a radiographer's assistant unless a radiographer is present during such operations. The deliberate violation of 10 CFR 34.44 by Mr. Cody, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Steven Cody will conduct licensed activities in compliance with the Commission's

requirements or that the health and safety of the public will be protected if Mr. Cody was permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of one year from the date of this Order, Steven Cody be prohibited from any involvement in NRC-licensed activities for either: (1) An NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for three years commencing after the one year period of prohibition, Mr. Cody must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Cody's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Cody's conduct is such that the public health, safety, and interest require that this Order be immediately effective.

#### IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Steven Cody is prohibited for one year from the date of this Order from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For three years after the above one year period of prohibition has expired Steven Cody shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Steven Cody shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Cody of good cause.

#### V

In accordance with 10 CFR 2.202, Steven Cody must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. When 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, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Cody or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20055, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60632-4531 if the answer or hearing request is by a person other than Mr. Cody. If a person other than Mr. Cody requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Cody or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Steven Cody, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere

suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provision specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 7th day of August 1995.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

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[Docket No. 030-31252, License No. 35-26996-01, IA 95-028]

#### **Maria Hollingsworth, Tulsa, Oklahoma; Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC (Effective Immediately)**

#### I

Maria Hollingsworth is the owner and operator of Blackhawk Engineering, Inc. (Licensee or Blackhawk) and served as the radiation safety officer with respect to its Nuclear Regulatory Commission (NRC or Commission) license. Blackhawk was issued Byproduct Materials License No. 35-26996-01 by the NRC, pursuant to 10 CFR Part 30, on August 22, 1989. The license authorized Blackhawk to possess and utilize sealed sources of radioactive material contained in moisture/density gauges in accordance with the conditions specified therein. The license expired on August 31, 1994, and Blackhawk did not submit a renewal application as provided in 10 CFR 30.37. On February 14, 1995, the NRC issued an order requiring Blackhawk to cease use of, and transfer, all NRC-licensed material in its possession to a person authorized to receive and possess such material (EA 95-018). Blackhawk complied with the terms of the order and on May 17, 1995, the NRC issued a Notice of Termination of Blackhawk's NRC license.

#### II

The February 14, 1995 order was issued to Blackhawk because: (1) Blackhawk continued to utilize gauges containing NRC-licensed material after