

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRCA), 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 96-502]

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,¹ 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 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 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