

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'97 JUL 18 P3:24

Before Administrative Judges:

B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Dr. Thomas S. Elleman

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED JUL 18 1997

In the Matter of
BARNETT INDUSTRIAL X-RAY, INC.

(License No. 35-26953-01)

Docket No. 030-30691-CivP

ASLBP No. 97-730-02-CivP

July 18, 1997

MEMORANDUM AND ORDER
(Initial Prehearing Order)

By letter dated June 16, 1997, Barnett Industrial X-Ray, Inc. ("Barnett") appealed from a Nuclear Regulatory Commission (NRC) Order Imposing Civil Monetary Penalty issued May 23, 1997 by the Director of the Office of Enforcement. The Director charged three violations of NRC safety regulations governing radiographers and levied a fine of \$4,000.00. Barnett seeks a hearing to have the penalty remitted.

This proceeding is governed by the rules set out at 10 C.F.R. Part 2, Subpart G (1997). An information copy of Part 2 may be found on the Internet at <<http://www.nrc.gov/NRC/ASLBP/part2cfr.txt>>. Pursuant to the July 14, 1997 establishment of this Licensing Board and 10 C.F.R. § 2.718, directions concerning the conduct of this proceeding are set out in Attachment 1 and are incorporated herein by reference.

SECY-EHD-007

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Upon consideration of the foregoing and the entire record in this matter, it is, this 18th day of July 1997

ORDERED

That on or before August 18, 1997, Barnett Industrial X-Ray, Inc. and the NRC Staff shall file a Joint Prehearing Report containing the following information:

1. A statement outlining the central issues for litigation in this proceeding relative to the various legal and factual assertions that are set forth in the February 24, 1997 Notice of Violation and that form the basis for the Director's May 23, 1997 civil penalty order. If the parties cannot agree on the wording or inclusion of any issue, the Report shall state each such issue separately with a notation identifying the sponsoring party. Each issue should reference any of the alleged violations that relate to that issue;

2. A statement identifying which, if any, of the issues specified in accordance with paragraph 1 each party believes is amenable to a dispositive motion and whether discovery will be needed prior to filing such a motion on that issue;

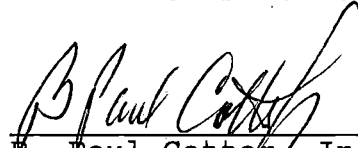
3. A statement of the length of time the parties estimate they will need to conduct discovery on the issues specified in accordance with paragraph 1;

4. A statement of the length of time the parties estimate will be needed to conduct an evidentiary hearing on the issues specified in accordance with paragraph 1;

5. A statement describing the status of any settlement discussions between the parties; and

6. A statement describing any other issues or matters in this proceeding of which the Board should be informed.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

A handwritten signature in cursive script, appearing to read "B. Paul Cotter, Jr.", written over a horizontal line.

B. Paul Cotter, Jr., Chairman
CHIEF ADMINISTRATIVE JUDGE

Issued at Rockville, Maryland

July 18, 1997

Administrative Matters

A. Notice of Appearance. Within ten days of the date of this memorandum and order, each counsel or representative for each participant who has not already done so, shall file a notice of appearance complying with the requirements of 10 C.F.R.

§ 2.713(b)(1996). See Attachment 2.

B. Service of Pleadings. For each pleading or other submission filed before the Board or the Commission in this proceeding, an original and two conforming copies shall be submitted to the Office of the Secretary as required by 10 C.F.R. § 2.708(d) and a copy to each participant pursuant to section 2.701(b). See Attachment 2. In addition, one conforming copy should be served on each Board member in accordance with the following instructions:

1. Regular Mail. To serve by United States Postal Service first-class mail, a conforming copy should be sent to each Board member at the following addresses:

B. Paul Cotter, Jr., Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Thomas S. Elleman
704 Davidson Street
Raleigh, NC 27609

For regular mail service to Judge Cotter and Judge Cole, the Staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

2. Overnight or Hand Delivery. To serve by overnight (e.g., express mail) or hand delivery, a conforming copy should be sent to each Board member at the following addresses:

B. Paul Cotter, Jr., Chairman
Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

Dr. Thomas S. Elleman
704 Davidson Street
Raleigh, NC 27609

3. Facsimile Transmission (FAX). To serve by FAX, one copy should be sent by rapifax to the attention of each of the Board members. For Judge Cotter and Judge Cole send to (301) 415-5599 (verification (301) 415-7393), and for Judge Elleman send to (919) 782-7975 (verification (919) 782-6685). A conforming copy should be sent that same date to each Board member by regular mail at the address given in paragraph B.1 above.

4. Timely Service by Hand Delivery or Facsimile Transmission. To be timely, any pleading or other submission served on the Board by hand delivery or facsimile transmission

must be received by the Board no later than 4:30 p.m. Eastern Time on the date due.

C. Motions for Extension of Time. In filing any motion for extension of time, except upon a showing of good cause, the moving participant shall:

1. Ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Board of that information in the motion; and

2. Provide the motion to the Board at least three business days before the due date for the pleading or other submission for which an extension is sought.

D. Exhibits/Attachments to Filings. If a participant files a pleading or other submission with the Board that has additional documents appended to it as exhibits or attachments, a separate letter or number designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Nuclear Regulatory Commission

10 CFR Ch. I (1-1-96 Edition)

§ 2.701 Filing of documents.

(a) Documents shall be filed with the Commission in adjudications subject to this part either:

(1) By delivery to the Public Document Room at 2120 L Street, NW., Washington, DC, or

(2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Section.

(b) All documents offered for filing shall be accompanied by proof of service upon all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission. The staff of the Commission shall be deemed to be a party.

§ 2.708 Formal requirements for documents.

(d) Except as otherwise provided by this part or by order, a pleading (or other document) other than correspondence shall be filed in an original and two conformed copies.

§ 2.713 Appearance and practice before the Commission in adjudicatory proceedings.

(b) *Representation.* A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law provided the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance which shall state his or her name, address, and telephone number; the name and address of the person on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

BARNETT INDUSTRIAL X-RAY, INC.

(Order Imposing Civil Monetary
Penalty)

Docket No.(s) 30-30691-CIVP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (INITIAL PREH. ORDER) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
B. Paul Cotter, Jr., Chairman
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555


Administrative Judge
Thomas S. Elleman
704 Davidson Street
Raleigh, NC 27609

Lawrence J. Chandler, Esq.
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Washington, DC 20555

Richard G. Bachmann, Esq.
Catherine L. Marco, Esq.
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Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dated at Rockville, Md. this
18 day of July 1997


Office of the Secretary of the Commission