

DOCKETED
LBP 87C19

'97 OCT 27 A11:03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:

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

SERVED OCT 27 1997

In the Matter of

BARNETT INDUSTRIAL X-RAY, INC.

(Stillwater, Oklahoma)

Docket No. 030-30691-CivP

ASLBP No. 97-730-02-CivP

October 24, 1997

MEMORANDUM AND ORDER

(Approving Settlement Agreement
and Dismissing Proceeding)

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, located in Stillwater, Oklahoma, sought a hearing to have the penalty remitted.

SECY-EHD-007

DS02

18601

Following the establishment of this Board on July 14, 1997, the Board ordered the parties to file a Joint Prehearing Report. That Report, filed on August 19, 1997, stipulated the issues as to which there was no dispute, identified the central issues for litigation, as well as those amenable to a dispositive motion, and estimated the time needed for discovery and hearing. At a September 3, 1997 telephone prehearing conference the Board directed the parties, inter alia, to enter into settlement negotiations and advise the Board by October 22, 1997 of the result. On September 17, 1997 the Board issued a notice of hearing based on the schedule agreed to at the prehearing conference as subsequently amended by the parties.

On October 17, 1997 the parties filed a Joint Motion for Approval of Settlement Agreement which attached a Joint Settlement Agreement. That agreement, before us now, provides that Barnett withdraws its request for hearing and sets out the terms and conditions whereby Barnett would pay a reduced civil penalty.

Once a hearing has been noticed, any negotiated settlement between the Staff and any of the parties subject to an enforcement order must be reviewed and approved by the Board pursuant to 10 C.F.R. § 2.203 (1997). Sequoyah Fuels Corporation and General Atomics, (Gore, Oklahoma Site Decontamination and Decommissioning Funding), CLI-94-12, 40 NRC 64, 71 (1994). At that point

...the NRC Staff no longer has untrammelled discretion to offer or accept a compromise or settlement. In any pending proceeding, the presiding officer's approval of settlement is a matter that must give due consideration to the public interest.

Id.

Moreover, just as the Commission, as a matter of policy stresses that the fair and reasonable settlement of contested licensing proceedings is encouraged, so too, such settlements are equally desirable in other kinds of proceedings. Cf. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979). The principle in Philadelphia Electric was reiterated in the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456 (1981); see also Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), LBP-94-10, 39 NRC 126 (1994).

We have reviewed the Settlement Agreement before us with those precepts in mind and find that the agreement is fair and reasonable. Accordingly, we find the agreement to be in the public interest and will approve it as requested by the parties.

ORDER

Upon consideration of the Joint Motion for the Approval of Settlement Agreement received by this Board on October 17, 1997 the


Joint Settlement Agreement attached thereto, and the entire record in this matter,

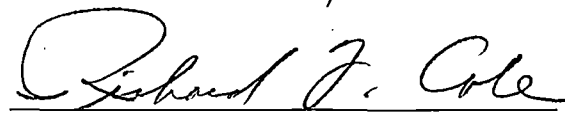
It is this 24th Day of October 1997

ORDERED

1. The Joint Settlement Agreement submitted by the parties, attached hereto and incorporated herein by reference, is approved as in the public interest.
2. Pursuant to 10 C.F.R. § 2.203 and in accordance with the terms of the Settlement Agreement, this proceeding is terminated and dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD*


B. Paul Cotter, Jr. Chairman
ADMINISTRATIVE JUDGE


Richard F. Cole
ADMINISTRATIVE JUDGE

Issued at Rockville, Maryland

October 24, 1997

*Administrative Judge Elleman was not available to sign this Memorandum and Order, but he was advised of its contents and approved of its issuance.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
BARNETT INDUSTRIAL X-RAY, INC.)	Docket No. 030-30691-CivP
)	
(Stillwater, Oklahoma))	

JOINT SETTLEMENT AGREEMENT

On May 23, 1997, the staff of the Nuclear Regulatory Commission (Staff) issued an "Order Imposing Civil Penalty" (Order) to Barnett Industrial X-Ray, Inc. (Barnett). 62 Fed. Reg. 30,346. In its Order, the Staff charged three violations of the Commission's regulations governing radiography and levied a fine of \$4,000. On June 16, 1997, Barnett requested a hearing. On July 14, 1997, an Atomic Safety and Licensing Board (Board) was established to preside in the proceeding.

The Staff and Barnett agree that it is in their respective interests and in the public interest to settle the enforcement action and agree to the following terms and conditions:

1. Barnett withdraws its request for a hearing.
2. Barnett agrees to pay a civil penalty in the amount of \$2,500.00 in four installments, to be paid in accordance with paragraph 4 of this Settlement Agreement.
3. If any installment remains unpaid for a period of thirty (30) days or more, the Staff may, in its discretion, consider this Settlement Agreement as materially breached.

In the event of a breach of this Settlement Agreement, the full amount of the civil penalty imposed on Barnett, \$4,000 (plus interest and administrative charges, less

any payments already made hereunder), will become due. In this event, Barnett agrees to waive any right to contest or seek review of the imposition of the civil penalty before the NRC or in any court.

4. Barnett agrees to make payments in four installments, with an installment every six months. The first payment is to be received thirty days after this Settlement Agreement has become final agency action (unless such day falls on a Saturday, Sunday or federal holiday, in which case payment is to be received by the next business day), plus interest on the unpaid principal balance accruing at the rate of 5 percent per year, as well as an administrative charge of \$10.00 per month. Subsequent payments shall be received by the first day of the month upon which payment is due as shown in the schedule in this paragraph. Payments shall be made payable to the United States Treasury and received at the address below until the principal sum and all interest and other charges assessed under the provisions of this Settlement Agreement have been fully paid.

Payments will be mailed or otherwise delivered to the following address:

U.S. Nuclear Regulatory Commission
Office of Enforcement
Attn; James Lieberman
Mail Stop O-7H5
Washington, DC 20555-0001

The following is a schedule of monthly installments:

BARNETT X-RAY
INVOICE NUMBER EA 96-502

PAYMENT NUMBER	PAYMENT DATE *	TOTAL PAYMENT	INTEREST AMOUNT	ADMIN. AMOUNT	PRINCIPAL AMOUNT	REMAINING BALANCE
BEGINNING BALANCE	\$2,500.00
1		725.00	10.42	60.00	654.58	1,845.42
2		725.00	7.69	60.00	657.31	1,188.11
3		725.00	4.95	60.00	660.05	528.06
4		590.26	2.20	60.00	528.06	0
TOTAL		\$2,765.26	\$25.26	\$240.00	\$2,500.00	

* The payment dates will be determined when the Settlement Agreement is approved by the Licensing Board. At that time, the NRC Office of Enforcement will inform Barnett of the dates by letter.

5. In the event of a material breach of this Settlement, Barnett agrees to pay all reasonable collection costs, court costs, and attorney's fees incurred by the Nuclear Regulatory Commission and/or the United States for any appropriate collection actions taken by the Nuclear Regulatory Commission and/or the United States. However, in no event will these costs exceed 5% of the total civil penalty imposed.

6. Failure or failures by the Staff to exercise any right in this Settlement Agreement with respect to a material breach shall not be construed as a waiver of its right to exercise the same or any other right at any time thereafter.

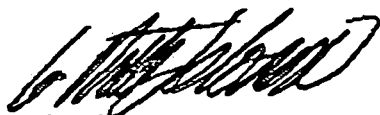
7. The provisions of this Settlement Agreement may not be changed except by a prior written agreement which specifies the agreed-upon changes and which is signed by the Staff and Barnett.

8. The parties agree and understand that this Settlement Agreement is only binding on the NRC and Barnett and relates only to NRC's authority to take civil enforcement action. This Settlement Agreement shall be binding upon the legal representatives, successors and assigns of Barnett.

9. The Staff and Barnett shall jointly move the Atomic Safety and Licensing Board designated in the above-captioned proceeding for an order approving this Settlement Agreement and terminating the proceeding.

In Witness Whereof, the parties have caused this Settlement Agreement to be executed by their authorized representatives.

FOR BARNETT INDUSTRIAL X-RAY, INC.



G. Michael Solomon
Counsel for Barnett Industrial X-Ray, Inc.

FOR THE NRC STAFF



Richard G. Bachmann
Counsel for NRC staff

Dated this 15th day of October, 1997

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 (LBP-97-19) TERMINATING 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

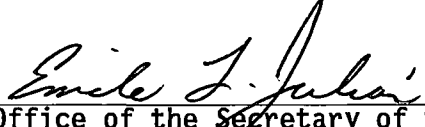
Administrative Judge
Thomas S. Elleman
704 Davidson Street
Raleigh, NC 27609

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

G. Michael Solomon, Esq.
Ellis & Morgan
711 South Husband Street
P.O. Box 1507
Stillwater, OK 74076

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

Dated at Rockville, Md. this
27 day of October 1997


Office of the Secretary of the Commission