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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

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Signed at Washington, DC, This 2nd Day of September 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–20353 Filed 9–9–04; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35059; License No. 34–06943–02; EA–03–204]

In the Matter of U.S. Inspection Services, Dayton, OH; Order Imposing Civil Monetary Penalty

I

Materials License No. 34–06943–02 was issued by the Nuclear Regulatory Commission (NRC or Commission) to U.S. Inspection Services (Licensee) on August 31, 1999. The license authorizes the Licensee to receive, acquire, possess, and transfer iridium-192 and cobalt-60 in sealed sources for use in industrial radiography and depleted uranium for shielding in industrial radiography equipment in accordance with the conditions specified therein. The license was renewed in its entirety on June 22, 2004, with Amendment No. 7 and is to expire on September 30, 2011.

II

An inspection of the Licensee's activities was conducted on September 12, 2003. The results of this inspection 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 June 15, 2004. The Notice states 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 July 12, 2004. In its response, the Licensee did not deny the violations, in whole or in part, did not dispute the severity level assigned to the violations, and did not contest the application of enforcement discretion to increase the amount of the civil penalty. The amount of the civil penalty was increased because of a lack of management oversight of the radiation safety program that significantly contributed to the conditions leading to the overexposure event described in the June 15, 2004, letter and Notice. However, the Licensee protested the proposed imposition of a civil monetary penalty in the amount of $19,200 indicating that the civil penalty adjustment factor for *Identification* was applied incorrectly. The Licensee also claimed that credit was not given for the corrective actions the Licensee had implemented.

III

After considering the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the civil penalty of $19,200 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 $19,200 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the 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, DC 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, EA–03–204'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4351, Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

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.

For the Nuclear Regulatory Commission.

Dated this 1st day of September 2004.

Frank J. Congel,

Director, Office of Enforcement.

APPENDIX—Evaluation and Conclusion

A response to the Notice was provided by U.S. Inspection Services (Licensee) in a letter dated July 12, 2004. In its response, the Licensee did not deny the violations, in whole or in part, and the Licensee did not contest the severity level assigned to the violations. The Licensee also did not dispute the use of enforcement discretion to increase the amount of the civil penalty. The amount of the civil penalty was increased due to a lack of management oversight of the radiation safety program which significantly contributed to the conditions leading to the overexposure event. However, the Licensee protested the proposed imposition of a civil monetary penalty in the amount of $19,200 because the Licensee believed that the civil penalty adjustment factor for *Identification* was incorrectly applied and credit was not given for the corrective actions taken by the Licensee.

Licensee's Request for Recission or Mitigation of the Civil Penalty

In the response to the Notice, the Licensee contended that the NRC incorrectly applied the civil penalty assessment process described in Section VI.C.2 of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600. In its presentation, the Licensee indicated that a prior escalated enforcement action, EA–02–201, that occurred within two years or two inspections of the current enforcement actions should be withdrawn. With EA–02–201 withdrawn, the Licensee contended that the Licensee would no longer have an escalated enforcement history within the prior two years or two inspections; therefore, the NRC Staff was not required to assess the civil penalty adjustment factor for *Identification* in accordance with Section VI.C.2.b(1) of the Enforcement Policy. In requesting that EA–02–201 be withdrawn, the Licensee argued that 10 CFR 34.41, the regulation cited in the Notice associated with EA–02–201, does not require that radiographic personnel be in direct line-of-site with each other; rather, the radiographic personnel present on August 29, 2002, maintained contact with each other by radio which is sufficient to meet the requirements of 10 CFR 34.41.

The Licensee also contended that credit was not given for the *Corrective Action* civil penalty adjustment factor.

NRC Evaluation of Licensee's Request for Recission or Mitigation of the Civil Penalty

A. The Licensee is correct that the previous escalated enforcement action, EA–02–201, should not have been considered in determining the application of the civil penalty adjustment factor for *Identification*. Section VI.C.2.b(1) of the Enforcement Policy provides that the NRC will consider the civil penalty adjustment factor for *Identification* for the second non-willful Severity Level III violation within a period of two years or two inspections, whichever is longer. The violations in the current escalated enforcement action, EA–03–204, were categorized as a Severity Level II problem.

In accordance with Section VI.C.2.b(1) of the Enforcement Policy the NRC Staff is not required to consider a Licensee's enforcement history in assessing the civil penalty adjustment process for a Severity Level II violation. Since the current violations are categorized as a Severity Level II problem, the NRC Staff was not required to consider a previous escalated enforcement action to assess the *Identification* civil penalty adjustment factor. Therefore, the existence of EA–02–201 is not a factor in assessing the civil penalty adjustment factor for *Identification*.

The NRC Staff concludes that the civil penalty adjustment factor for *Identification* was properly assessed in accordance with the Enforcement Policy and consideration of the previous escalated enforcement action, EA–02–201, was not required by the Enforcement Policy to complete that assessment. Since the NRC Staff identified the violation, no credit for the *Identification* factor was warranted.

B. As part of its argument regarding the civil penalty adjustment factor for *Identification*, the Licensee contended that the prior enforcement action, EA–02–201, should be withdrawn. On November 29, 2002, the NRC issued a Severity Level III violation associated with the Licensee's failure to have two qualified individuals present during radiographic operations on August 29, 2002, at a field location in Indianapolis, Indiana, in violation of 10 CFR 34.41(a), ''Conducting Industrial Radiographic Operations.'' The Licensee contends that 10 CFR 34.41(a) does not require radiographic personnel to maintain direct visual line-of-site contact. Rather, the Licensee personnel used radios on August 29, 2002, to maintain communications at the temporary site in Indianapolis, Indiana, and the use of radios improved their ability to provide immediate assistance to prevent unauthorized entry into the radiation field. Therefore, EA–02–201 should be withdrawn.

The Commission's regulations at 10 CFR 34.41 provide that during field radiography, the radiographer must be accompanied by at least one other qualified individual and the other qualified individual must observe operations and be capable of providing immediate assistance to prevent unauthorized entry. Additionally, 10 CFR 20.1902, ''Posting Requirements,'' provides, in part, that the Licensee will post each radiation area with a conspicuous sign or signs marking the radiation hazard.

A ''radiation area'' is defined in 10 CFR 20.1003 as an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem in 1 hour at 30 centimeters or 30 centimeters from any surface that the radiation penetrates. For the purposes of 10 CFR 20.1003, individual means any human being. Measurements and assessments of the radiation level at the Indianapolis, Indiana, job site indicated a level of 25 milliroentgen per hour, exterior to the building, at 65 feet from the exposure device containing 41 curies of iridium-192, assuming a point source, a gamma constant

of 5.2 roentgen per hour per curie at 30 centimeters, and considering shielding inherent to the facility including structures and equipment.

On August 29, 2002, a radiographer and a radiographer's assistant were assigned by the Licensee to conduct field radiographic operations at a temporary job site in Indianapolis, Indiana. The radiography consisted of eight exposures, including uncollimated panoramic exposures, of a heat exchanger inside of a building. The radiographer and the radiographer's assistant did not conspicuously post the radiation area exterior to the building to warn of the radiation area created during the radiographic exposures. While the radiographer remained inside the building to observe the radiographic operation, the radiographer's assistant was to stay outside of the building to warn anyone approaching the area of the radiation hazard.

One section of the radiation area was behind a wooden fence and that area was accessible to the public. That section was not posted as a radiation area and the fence blocked the view of that area for the radiographer's assistant. Therefore, neither the radiographer nor the radiographer's assistant could provide immediate assistance to prevent unauthorized entry into the radiation area because the radiographer's view of the area was blocked by the building wall.

While controlling access outside of the building to prevent unauthorized entry into another section of the radiation area, the radiographer's assistant was approached by the owner of an adjacent building with questions about potential radiation hazards in that person's building. The radiograph's assistant left the radiation area where he was posted to control access to prevent unauthorized access and went to the near-by building to answer questions about potential radiation hazards. While inside the adjacent building, the radiographer's assistant could not view the radiation area and the radiographer could not maintain visual surveillance of the area because of the intervening building wall. The absence of a qualified individual to maintain surveillance to prevent unauthorized access to a radiation area and the failure to post warnings of the radiation hazard are violations of 10 CFR 34.41(a) and 10 CFR 20.1902.

The NRC Staff concludes that the radiographer's assistant could not observe a section of the radiation area at the temporary job site in Indianapolis, Indiana, and therefore could not observe radiographic operations or provide assistance to prevent unauthorized entry into a radiation area and the area was not marked as a radiation area. The NRC Staff also concluded that the radiographer's assistant left another section of the radiation area unattended and the radiation area was not posted; therefore, no means existed to warn individuals of the presence of a radiation area or to prevent unauthorized entry into that area. The use of radios between Licensee personnel would not have adequately compensated for the absence of the radiographer's assistant or appropriate postings to warn of the radiation hazard.

Since qualified individuals could not observe the radiation area exterior to the building while radiographic operations were taking place, they were not in a position or capable of providing immediate assistance to prevent unauthorized entry into the radiation area exterior to the building, and radio communication would not have provided any assistance to prevent unauthorized entry into the radiation area. Therefore, EA–02–201 remains valid and will not be withdrawn.

C. The Licensee contended that the NRC did not give credit for the civil penalty adjustment factor associated with *Corrective Action*. As explained in the June 15, 2004, letter from the NRC, credit was warranted for the *Corrective Action* adjustment factor and no additional civil penalty was assessed for the *Corrective Action* factor.

The NRC gave appropriate credit to the Licensee for the corrective actions implemented by the Licensee, as described in the June 15, 2004, letter from the NRC to the Licensee.

Section VI.C of the Enforcement Policy, provides, in part, that management involvement, direct or indirect, may lead to an increase in the civil penalty. Section VII.A.1 of the Enforcement Policy provides for escalating the amount of the civil penalty by the base or twice the base civil penalty to ensure that the civil penalty reflects the significance of the circumstances. The NRC escalated the amount of the civil penalty by the base amount due to a lack of management oversight of the radiation safety program which significantly contributed to the conditions leading to the overexposure event described in the June 15, 2004, letter and Notice. The Licensee, however, did not contest this application of enforcement discretion in its July 12, 2004, response to the Notice.

NRC Conclusion

The NRC has concluded that the violations occurred as stated and neither an adequate basis for a reduction of the severity level nor for recission or mitigation of the civil penalty was provided by the Licensee. Consequently, the proposed civil penalty in the amount of $19,200 should be imposed.

[FR Doc. 04–20496 Filed 9–9–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50311]

Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.

September 3, 2004.

I. Introduction

The National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Rule 0–12 [1] under the Securities Exchange Act of 1934 (''Exchange Act''), an application for an exemption under Section 36(a)(1) of the Exchange Act [2] from the rule filing requirements of Section 19(b) of the Exchange Act [3] with respect to Nasdaq's acquisition of Brut, LLC, operator of the Brut ECN (''Brut''), a registered broker-dealer, and electronic communications network (''ECN''), as a wholly-owned subsidiary of Nasdaq.[4] This order temporarily grants the request for exemptive relief subject to NASD and Nasdaq satisfying certain conditions, which are outlined below.

II. Nasdaq's Application for Temporary Conditional Exemption From Section 19(b) Rule Filing Requirements

On August 25, 2004, Nasdaq requested that the Commission grant temporary exemptive relief, subject to certain conditions, from the rule filing procedures of Section 19(b) of the Exchange Act [5] with regard to Nasdaq's acquisition and operation of Brut as a wholly-owned subsidiary of Nasdaq.[6] According to Nasdaq's Exemption Request, Nasdaq entered into a definitive agreement to purchase Brut on May 25, 2004. Brut is currently an NASD member and participates in the Nasdaq Market Center execution system (formerly know as the ''Nasdaq National Market Execution System'' or ''SuperMontage'') as a Nasdaq Order-Delivery ECN.[7] Brut's current relationship with Nasdaq is limited to participating in the Nasdaq Market Center execution system in the same manner as other ECNs. Nasdaq currently has no ownership interest in Brut.[8]

Once acquired by Nasdaq, Brut would become a ''facility'' of a self-regulatory organization (''SRO'') pursuant to

[1] 17 CFR 240.0–12.

[2] 15 U.S.C. 78mm(a)(1).

[3] 15 U.S.C. 78s(b).

[4] On August 6, 2004, the NASD Board of Governors approved Nasdaq's proposal to seek the exemption. The obligation to file with the Commission proposed changes to the NASD rules concerning Nasdaq systems has been delegated to Nasdaq by the NASD, pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan''). Nasdaq submitted this request for exemption pursuant to the Delegation Plan.

[5] *Id.*

[6] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated August 25, 2004 (''Exemption Request'').

[7] *See* NASD Rule 4701(t).

[8] *See* Exemption Request, *supra* note 6.