



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Proceedings, Including Reasons for Determination

In the Matter of

Applicant Anode NDT Ltd.

Subject Request for Commission Review of Notice of
Violation and Administrative Monetary Penalty
Issued on April 8, 2014

Hearing Date September 12, 2014

RECORD OF PROCEEDINGS

Applicant: Anode NDT Ltd.

Address/Location: 9505 – 113 Street, Grande Prairie, Alberta, T8V 5L2

Purpose: Request for Commission Review of Notice of Violation and Administrative Monetary Penalty Issued on April 8, 2014

Request received: May 20, 2014

Date of hearing: September 12, 2014

Location: Canadian Nuclear Safety Commission (CNSC)
280 Slater St., Ottawa, Ontario, Applicant and CNSC staff on teleconference

Members present: M. Binder, Panel

Secretary: M. Leblanc
Recording Secretary: M. Hornof
General Counsel: L. Thiele

Licensee/Person Named in or Subject to AMP Represented By		Document Number
• N. Weston		CMD 14-H110.1
CNSC staff		Document Number
• R. Jammal • M. James • A. Régimbald • H. Rabski • H. Tadros	• J.C. Poirier • K. Heppell-Masys • D. Ben-Reuven • K. Glenn	CMD 14-H110

Administrative Monetary Penalty Amount: Corrected

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1.0 INTRODUCTION

1. Anode NDT Ltd. (Anode) holds Canadian Nuclear Safety Commission¹ licence No. 14784-1-18.0 and has been licensed by the CNSC since April 2013. Anode's licence authorizes Anode to possess, transfer, use and store listed nuclear substances and radiation devices at locations throughout Alberta, Saskatchewan and British Columbia.
2. On March 17, 2014, following an unannounced inspection, a CNSC inspector issued CNSC Order #428 to Anode to take immediate corrective action as a result of non-compliances that were observed. On March 19, 2014, a second unannounced inspection was conducted by a CNSC inspector. Several non-compliances, including non-compliances from the previous order, were observed.
3. Pursuant to subsection 34(1) of the *Canadian Nuclear Safety Commission Rules of Procedure*², and subsection 35(3) and paragraph 37(2)(g) of the *Nuclear Safety and Control Act*³ (NSCA), a CNSC Designated Officer reviewed Order #428. Following an opportunity to be heard for the order on May 5, 2014, a CNSC Designated Officer amended Order #428 to include non-compliances from the March 19, 2014 inspection.
4. On April 8, 2014, in accordance with subsection 65.02(1) of the NSCA, a CNSC Designated Officer issued a Notice of Violation with an associated Administrative Monetary Penalty (AMP), 2014-AMP-04, in the amount of \$2,540.00. As stated in the Notice of Violation, an AMP was issued to the licensee based on the potential safety implications arising from violation of paragraph 32(1)(a) of the *Nuclear Substances and Radiation Devices Regulations*⁴ (NSRD Regulations) and was considered appropriate to promote future compliance.
5. On May 20, 2014, in accordance with subsection 65.1 of the NSCA, Anode made a request to the Commission for a review of the facts of the violation and the amount of the AMP (CMD 14-H110.1).

Issue

6. Pursuant to subsection 65.14(1) of the NSCA, and as per the request made by Anode, the Commission was required to determine whether Anode committed the violation as stated in 2014-AMP-04 and whether the amount of the penalty for the violation was determined in accordance with the *Administrative Monetary Penalties Regulations*⁵ (AMPs Regulations).

¹ The *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² SOR-2000-211.

³ Statutes of Canada (S.C.) 1997, chapter (c.) 9.

⁴ SOR-2000-207.

⁵ SOR-2013-139.

Hearing

7. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to consider the request from Anode. The Commission, in making its determination, considered information presented for a hearing held on September 12, 2014 with CNSC staff in Ottawa, Ontario and via teleconference from Alberta, and with an Anode representative via teleconference from Alberta. During the hearing, the Commission considered written submissions and heard oral presentations from Anode (CMD 14-H110.1) and CNSC staff (CMD 14-H110).

2.0 DETERMINATION

8. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*,

the Commission, pursuant to section 65.14(1) of the *Nuclear Safety and Control Act*, determines that Anode NDT Ltd. committed the violation of *Nuclear Substances and Radiation Devices Regulations*, paragraph 32(1)(a). The Commission also determines that the amount of Administrative Monetary Penalty, 2014-AMP-04, was not determined in accordance with the *Administrative Monetary Penalties Regulations*, and corrects the amount from \$2,540.00 to \$2,100.00.

3.0 ISSUES AND COMMISSION FINDINGS

9. In reviewing the Notice of Violation and AMP under subsection 65.14 of the NSCA, the Commission considered (1) whether the person committed the violation and (2) whether the amount of the penalty was determined in accordance with the regulations. As per section 65.15 of the NSCA, the burden of proof is on the person who issued the Notice of Violation to show, on a balance of probabilities, that the violation was committed. In this regard, the Commission considered the facts of the violation presented by Anode and CNSC staff. The Commission also considered the seven factors set out in Section 5 of the AMPs Regulations to determine the correctness of the penalty amount.

Review Hearing

10. On September 12, 2014, the Commission conducted the review under section 65.14 of the NSCA. Specifically, Anode was given an opportunity to provide the Commission with more information regarding the events that led to the issuance of Order #428, the CNSC inspection on March 19, 2014, and the Notice of Violation/AMP.

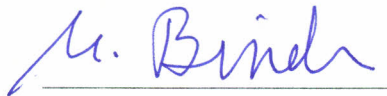
11. In their written submission, Anode does not dispute the fact that the CNSC inspector observed the violations committed on March 17, 2014 and March 19, 2014. Furthermore, Anode does not dispute the facts that led to the issuance of Order #428 which included the commission of violations by Anode on March 17, 2014. Anode also questioned in their written submission the appropriateness of the March 17, 2014 unannounced inspection. CNSC staff reported that, after reviewing Anode's assertion, they were satisfied that the inspector had the legal authority under section 30 of the NSCA to perform both unannounced inspections, and that he did so to the highest of professional standards.
12. A representative from Anode stated that the company's reputation suffered after the order and Notice of Violation/AMP were issued, and that the Certified Exposure Device Operator (CEDO) who was the subject of Order #428 should have received the AMP, not the company. The Commission enquired on why the CEDO who was working during the March 17, 2014 inspection was not subject to a Notice of Violation/AMP. CNSC staff responded that during the March 17, 2014 inspection, it was clear that the licensee appointed a trainee supervisor who did not have the appropriate training and experience for this role. Additionally, inadequate trainee supervision by a different supervisor, who is a CEDO as well as the company radiation safety officer (RSO), was again observed during the March 19, 2014 inspection and this indicated that the likelihood of reoccurrence of this non-compliance with this licensee was high. Therefore, it was determined that an AMP was appropriate to promote future compliance by the licensee. It was also recommended by CNSC staff that, through a separate process, the CEDO present during the March 17, 2014 inspection be de-certified.
13. The Commission requested additional information on the CEDO certification status of the trainee supervisor from the March 17, 2014 inspection. The Anode representative stated that he was no longer an employee of Anode and that he was working as a CEDO at a different company. CNSC staff added that while the recommendation to decertify was made at the time of the order, the matter is under review by a CNSC Designated Officer. The Commission expressed dissatisfaction with the length of time required for the decertification process and requested that this matter be addressed expeditiously.
14. The Commission requested more information on how an AMP is calculated and how the amount was determined in this matter. The CNSC Designated Officer explained that degree of intention or negligence, harm, and mitigation or reverse effects were considered relevant factors in the calculation of this AMP, and provided details of their analysis. The Commission noted that by weighing both the "degree of intention or negligence" and "mitigation or reverse effects" factors into the AMP calculation for the same non-compliance, the factors for this non-compliance were not correctly determined. CNSC staff disagreed with this assertion and stated that Anode made no effort to ensure adequate trainee supervision at the second inspection.

15. The Commission asked for more details on how trainee supervision is deemed to be adequate and compliant. CNSC staff responded that the supervisor is expected to directly supervise the trainee, ensure that all radiological safety equipment is used, and be able to stop the trainee from performing any unsafe actions. Supervising a trainee from a vehicle does not allow the supervisor to maintain direct, “over the shoulder” supervision. The Anode representative disagreed that direct, “over the shoulder” supervision was required and stated that he had been told by a different CNSC inspector in October 2013 that this type of supervision was adequate. CNSC staff disagreed with the last statement, citing section 24 of the NSRD Regulations as evidence of the supervision requirements for trainees, and stated that it was clear from the two inspections that Anode was not aware of its obligations under the NSRD Regulations and displayed a systematic failure of compliance with regulatory requirements. The Anode representative stated that since the March 2014 inspections, they have been conducting constant “over the shoulder” supervision with all trainees and that additional CEDO training has been provided.
16. The Commission enquired about whether Anode was now in full compliance. CNSC staff stated that it was. The Anode representative stated that publishing the order and Notice of Violation/AMP on the CNSC public website caused the company undue hardship. The Commission advised Anode that when regulatory action is taken, it is publicly disclosed on the CNSC website, for both small and large operations.
17. The Commission asked about the results from previous CNSC inspections of Anode. CNSC staff indicated that Anode had been inspected on two previous occasions and that no significant items of non-compliance were found during those inspections.

4.0 CONCLUSION

18. The Commission has considered the information and submissions from Anode and the Designated Officer, and determines that Anode committed the violation pursuant to paragraph 32(1)(a) of the *Nuclear Substances and Radiation Devices Regulations* on two occasions. The evidence showed that the CEDOs appointed by Anode to supervise a trainee in the safe operation of an exposure device did not perform this role in a satisfactory manner. Furthermore, Anode acknowledged that the violation occurred.
19. The Commission, however, based on the information that was submitted about the event, is satisfied that there was an error in the determination of the penalty amount. The factor “mitigation or reverse effects”, paragraph 5(e) of the AMPs Regulations, was assessed as a +1 by the Designated Officer, with the following rationale: “Based on the results of the inspection carried out on March 19, 2014 that identified repeated deficiencies in supervision just two days after Order #428 was issued to address the same problem, I come to the conclusion that there were no efforts to mitigate or reverse the effects of the violation and this should be considered a factor in determining the penalty amount.” The Commission finds that this factor, whether the person made efforts to mitigate or reverse the effects of their actions, was applied in addition to the “degree of intention or negligence” factor in the AMP calculation for the same non-compliance. As a result, and as per section 65.15 of the NSCA, it corrects the assessed score for this factor to a 0.

20. With this determination, in accordance with 64.14(4) of the NSCA, the Commission directs Anode to submit payment for the 2014-AMP-04 in the amount of \$2,100.00 within 30 days of the date of this determination.
21. In accordance with 65.14(5) of the NSCA, this determination is final and binding.



Michael Binder
President,
Canadian Nuclear Safety Commission

OCT 09 2014

Date