

September 2, 2010

IA-10-028

Mr. Mark M. Ficek, President
Mattingly Testing Services, Inc.
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Ficek:

The enclosed Order Prohibiting Involvement in U.S. Nuclear Regulatory Commission (NRC) Licensed Activities (Effective Immediately) is being issued to you as a result of the NRC staff's conclusions based on two investigation reports issued by the NRC's Office of Investigations on April 19, 2010 and May 14, 2010, as well as continuing staff review of these investigations through August 2010. The NRC found that you engaged in deliberate misconduct as defined in 10 CFR § 30.10, causing Mattingly Testing Services, Inc., (Mattingly) to be in violation of a number of significant radiation safety requirements. In addition, the NRC found that you violated Confirmatory Order (IA-08-055) by continuing to engage in NRC-licensed activities after that Confirmatory Order prohibited you from such activities.

As described in the enclosed Order, the NRC found that you (i) deliberately failed to implement the requirements of Confirmatory Order (EA-08-271), which dispositioned a number of willful and non-willful violations through alternative dispute resolution in 2009; (ii) deliberately failed to establish and maintain a prearranged plan with the local law enforcement agency, as required by Increased Controls Order (EA-05-090); (iii) deliberately provided material false information to an NRC inspector during a site visit in March 2007 regarding Mattingly having established a prearranged plan with the local law enforcement agency in accordance with NRC security requirements; and (iv) deliberately provided material false information to an NRC investigator in 2009 regarding the same local law enforcement agency prearranged plan.

In addition, the NRC found that you violated the provisions of Confirmatory Order (IA-08-055) Section V.1, which specified that you were prohibited for 2 years from the date of the Order (March 6, 2009) from engaging in NRC-licensed activities. The NRC found that although you were suspended from engaging in NRC-licensed activities you (i) continued to answer employees' questions about radiation safety issues and purchase radiographic exposure devices; (ii) directed the activities of a required independent consultant; (iii) assumed the duties of the Radiation Safety Officer (RSO) to determine reporting requirements for a lost radiographic exposure device, and after being notified by the NRC that a report was required, wrote and signed a report; and (iv) applied, on behalf of Mattingly, for reciprocity to use radioactive material in an Agreement State pursuant to Mattingly's NRC license.

The enclosed Order prohibits your involvement in all NRC-licensed activities for a period of 7 years from the date of the Order. The enclosed Order provides that you must immediately cease NRC-licensed activities, and if you are currently involved with another NRC licensee, you must inform the NRC of the name, address and telephone number of the employer and provide a copy of this Order to the employer. Also, for an additional 3-year period after the 7-year period of prohibition has expired, you are required, within 10 days prior to your acceptance of your first employment offer involving NRC-licensed activities or becoming involved in NRC-licensed activities, to provide written notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC, 20555, of the name, address, and telephone number of the employer or the entity where you are, or will be, involved in the NRC-licensed activities. Additionally, upon issuance of this Order (Effective Immediately), the Order Prohibiting Involvement in NRC-Licensed Activities, IA-08-055, dated March 6, 2009, is rescinded. Finally, in a related enforcement action, an Order Revoking License 25-21479-01 is being issued to Mattingly Testing Services, Inc., based, in part, on your deliberate actions.

In accordance with 10 CFR 2.202, you are required to provide an answer to this Order within 20 days of the date of this Order. Failure to comply with the provisions of this Order may result in further civil enforcement action. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions.html>. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Mr. Mark M. Ficek

- 3 -

Questions concerning the enclosed Order should be addressed to Mr. Art Howell, Director, Division of Nuclear Material Safety, NRC Region IV, Arlington, Texas, who can be reached at 817-860-8106.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Docket No. 030-20836
License No. 25-21479-01

Enclosure: As Stated

cc w/enclosure:

Mr. Mark M. Ficek

- 4 -

Questions concerning the enclosed Order should be addressed to Mr. Art Howell, Director, Division of Nuclear Material Safety, NRC Region IV, Arlington, Texas, who can be reached at 817-860-8106.

Sincerely,

/RA/

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Docket No. 030-20836
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Enclosure: As Stated

cc w/enclosure:

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DATE	7/30/10	7/30/10	7/28/10	7/28/10	7/28/10	8/3/10

OFFICE	DRA	FSME	OGC	OE	RA	D:OE
NAME	CACasto	JLuehman*Ema	MBarkman/RA/	NHilton/RA/	EECollins/RA/f	RZimmerman
DATE	8/3/10	8/27/10	9/2/10	8/26/10	8/27/10	9/2/10

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	Docket No. 030-20836
)	License No. 25-21479-01
Mark M. Ficek)	A-10-028

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

[NRC-2009-0120]

Mr. Mark M. Ficek is the President, owner, and former radiation safety officer (RSO) of Mattingly Testing Services, Inc. (Mattingly or Licensee). Mattingly is the holder of Materials License 25-21479-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34, last amended on May 28, 2010, to change the facility's permanent storage location and name a new radiation safety officer, and due to expire on February 28, 2016. The license authorizes Mattingly to possess and use byproduct material for industrial radiography operations in NRC jurisdiction and in areas of exclusive Federal jurisdiction within Agreement States. The license currently authorizes storage at licensee facilities in Molt and Billings, Montana. The license further authorizes the possession of natural or depleted uranium, as solid metal, for shielding in radiography equipment. On the same date this Order (IA-10-028) is issued to Mr. Ficek, the NRC is also issuing Mattingly an Order Revoking License (Effective Immediately) (EA-10-100).

Currently, both Mr. Ficek (IA-08-055) and Mattingly (EA-08-271) are subject to Confirmatory Orders issued on March 6, 2009, which resulted from alternative dispute resolution

(ADR) mediation sessions conducted on February 5, 2009. Those Orders were made immediately effective upon issuance. The ADR mediation session and resultant Confirmatory Orders dispositioned nine violations, five of which were willful, identified during an NRC inspection and an investigation by the NRC's Office of Investigations. The 2008 investigation identified several violations: (1) a failure to provide complete and accurate information to the NRC; (2) a radiographer assistant performing radiographic operations without a dosimeter; (3) a radiographer assistant using a radiographic exposure device without supervision of a radiographer; (4) failure to secure a radiographic exposure device with a minimum of two independent physical controls; (5) failure to remove a radiographic exposure device from service after it had sustained damage to the locking mechanism; (6) failure to notify the NRC after discovery of damage to a radiographic exposure device; (7) an individual acting as a radiographer assistant without completing a practical examination on the use of the radiography equipment; (8) failure to ensure that all personnel dosimeters were checked for proper response to radiation every 12 months; and, (9) failure to have a functional alarm system to allow the licensee to monitor, detect, assess, and respond to unauthorized access to radioactive material when the radioactive material is not under direct observation by Mattingly staff and stored in a portable darkroom, as required by Increased Controls Order (EA-05-090). The NRC also found that willfulness was involved in violations 1, 3, 5, 7, and 8, above.

The NRC determined that the willful violations listed above were caused by the willful or deliberate actions of the Mattingly president and then RSO, Mr. Mark Ficek. ADR was offered to both Mattingly and Mr. Ficek in order to disposition the nine violations listed above. As a result of ADR with Mr. Ficek, a Confirmatory Order (IA-08-055) was issued that prohibited Mr. Ficek from engaging in NRC-licensed activities for a period of 2 years.

As a result of ADR with the Licensee, a Confirmatory Order (EA-08-271) was issued that

required, among other things, that Mattingly retain an expert consultant, to be approved by the NRC, and that the consultant would take specific actions within strict deadlines. Given the number and varied violations described above, the consultant's actions were to include reviewing and assessing Mattingly's entire radiation safety program, providing radiation safety training to the Mattingly staff who conduct radiography, and conducting field audits of the staff to identify areas needing additional corrective action. The expert consultant was approved by the NRC on April 3, 2009 (ADAMS Accession No. ML090930661). As a result, the radiation safety procedures assessment was to commence and the radiation safety training for the Mattingly staff was to be completed by May 3, 2009.

II

On June 30, 2009, the NRC inspected the Licensee's facility in Molt, Montana, after the NRC, Region IV received a police report stating that the County Sheriff's office had recovered, from a member of the public, a radiography exposure device Mattingly had lost. The NRC-initiated investigations and inspections identified several violations of regulatory requirements, four of which involve deliberate misconduct by Mr. Ficek, including providing false information to the NRC. As such, Mr. Ficek was found to be in violation of 10 CFR 30.10, "Deliberate Misconduct," subparts (a)(1) and (a)(2). Specifically, 10 CFR 30.10(a)(1) and (a)(2) require that any licensee or employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order issued by the Commission; or deliberately submit to the NRC information the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. Since the 2009 Confirmatory Orders, the NRC has determined that Mr. Ficek violated 10 CFR 30.10 on four occasions:

- (1) Mr. Ficek deliberately put Mattingly in violation of Confirmatory Order (EA-08-271) when

he committed to Mattingly meeting strict deadlines in the Order, knew what those deadlines were, put himself in charge of ensuring compliance with the Order, but let the Order's deadlines pass knowing that he was causing Mattingly to violate the Order. Specifically, the Confirmatory Order required Mattingly to select an independent consultant to review Mattingly's radiation safety program and to conduct training for Mattingly's staff. The NRC approved the independent consultant on April 3, 2009, which set May 3, 2009, as the date by which the consultant was to commence the assessment of the Mattingly radiation safety program, as well as complete the specified training for Mattingly staff. Testimony provided by the independent consultant to the NRC investigator on June 30, 2009, revealed that the consultant was not aware of the May 3, 2009, deadline. The consultant indicated that Mr. Ficek had directed him to complete his actions by the end of 2009, but he did not at that time have a specific plan to do so, nor was he aware of the deadlines for other actions assigned to the independent consultant in the Confirmatory Order. Moreover, testimony provided by Mr. Ficek and the consultant to the NRC investigator revealed that Mr. Ficek did not give the consultant a copy of the Confirmatory Order that described the required actions and respective deadlines. Mr. Ficek knew the Confirmatory Order's requirements, but rather than sharing the Confirmatory Order with the consultant or another Mattingly official to ensure compliance, he withheld the information and allowed the Confirmatory Order's deadlines to pass, putting Mattingly in violation of the Confirmatory Order (EA-08-271). The NRC showed the consultant the Confirmatory Order for the first time during the NRC investigation. Had the NRC not interdicted at that time, implementation of required improvements to the Licensee's radiation safety program and safety training programs would have been even further delayed, if completed at all. The assessment of the Mattingly radiation programs was not begun until May 30, 2009, and the initial safety training of the Mattingly staff was not completed until July 19, 2009. Finally, Mr. Ficek caused Mattingly to not provide a

license amendment to the NRC by May 3, 2009, which put Mattingly in violation of Confirmatory Order (EA-08-271). The license amendment was subsequently submitted on June 30, 2009.

(2) From May 13, 2006, through September 9, 2009, Mattingly, as a result of Mr. Ficek's deliberate inaction, failed to establish and maintain a prearranged plan with the local law enforcement agency to respond to any attempt to gain unauthorized access to radioactive materials, as required by Increased Controls Order (EA-05-090). Specifically, Increased Controls Order, Attachment B, Section IC-2(b), requires that the licensee shall have a prearranged plan with a local law enforcement agency for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices, which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. During an NRC inspection of the Mattingly facility in March 2007, Mr. Ficek informed the NRC inspector that he had established a prearranged plan with the Laurel Police Department, when in fact he had not established a prearranged plan with the Laurel Police Department. Upon further investigation the NRC determined that Mattingly's facility was not located in the Laurel Police Department's jurisdiction, but instead was located in the Yellowstone County Sheriff's jurisdiction, and that Mattingly had not established a prearranged plan with the Yellowstone County Sheriff's Office. Mr. Ficek's false statement to the NRC inspector—which made clear that Mr. Ficek was aware of the requirement, but had not implemented it—caused the NRC to find that the failure to meet the Increased Controls Order, Appendix B, Section IC-2(b), was deliberate.

(3) On March 6, 2007, Mr. Ficek deliberately provided false information to an NRC inspector by stating that he had established a prearranged plan with the local law enforcement

agency in accordance with Increased Controls Order (EA-05-090), violating 10 CFR 30.10(a)(2), and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." As described above, Mr. Ficek stated to an NRC inspector that the prearranged plan had been established with the Laurel Police Department in Laurel, Montana. The NRC determined that neither Mr. Ficek nor any Mattingly official had contacted the Laurel Police Department to establish a prearranged response plan. The NRC also determined during its 2009 investigation that the Laurel Police Department had no jurisdiction for the Mattingly facility in Molt, Montana. Further, testimony by a representative of the appropriate local law enforcement agency (Yellowstone County Sheriff's Office) revealed that no prearranged plan had been established with them, or was sought by Mr. Ficek or any other Mattingly officials. Mr. Ficek's false statement to the NRC inspector was a significant contributor to the duration of the Increased Controls Order violation since Mattingly did not implement the local law enforcement plan until September 9, 2009, more than 2 years after the NRC inspector initially questioned the Licensee's actions to establish the prearranged plan, and only after an NRC investigation revealed the violation.

(4) On October 22, 2009, while under oath, Mr. Ficek deliberately provided false testimony to the NRC investigator, again violating 10 CFR 30.10(a)(2) and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." Mr. Ficek claimed that two witnesses could confirm that he had conversations during a lunch engagement with the Laurel Police Chief regarding the required local law enforcement agency prearranged plan. Testimony provided by witnesses to the lunch engagement, including the Laurel Police Chief, refuted Mr. Ficek's statements. Further, in addition to testimony that the Laurel Police Chief recalled no discussion of a response plan, and that the Laurel Police Chief knew that the Laurel Police Department had no jurisdiction to respond to the

Mattingly facility, the Laurel Police Chief offered evidence indicating that the lunch engagement at issue took place on July 13, 2003, some 28 months before the Increased Controls Order was issued to Mattingly. Therefore, the NRC found that Mr. Ficek deliberately provided false testimony while under oath when he attempted to cite a lunch engagement with the Laurel Police Chief in 2003 to demonstrate to the NRC that Mattingly was in compliance with the Increased Controls Order.

In addition to the above violations of the NRC deliberate misconduct rule, the NRC also found that Mr. Ficek violated provisions of his Confirmatory Order (IA-08-055) on several occasions by continuing to engage in NRC-licensed activities while he was prohibited from doing so. Section V.1 of Confirmatory Order (IA-08-055) specifies that Mr. Ficek is prohibited for 2 years from the date of the Order (March 6, 2009) from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities conducted pursuant to the authority granted by 10 CFR 150.20.

First, Mr. Ficek continued to engage in Mattingly's day-to-day licensed activities. A number of Mattingly's employees informed the NRC investigators that they continued to consult Mr. Ficek for advice about radiation safety when the RSO could not help them. Mr. Ficek also stated that he remained involved in purchasing radiography devices, determining when to ship them back to the manufacturer, and which devices to use on which jobs. All of these activities violated Mr. Ficek's Confirmatory Order (IA-08-055).

Another example of Mr. Ficek engaging in licensed activities included his supervision of the independent consultant Mattingly was required to hire to improve its radiation safety program and provide training. The Confirmatory Orders to Mattingly (EA-08-271) and Mr. Ficek

(IA-08-055) were issued on the same date. Because Mr. Ficek was prohibited from engaging in licensed activity, he was required to avoid work that involved Mattingly's compliance with NRC requirements. Nonetheless, Mr. Ficek placed himself in charge of ensuring compliance with Mattingly's Confirmatory Order (EA-08-271) without sharing the Mattingly Order with Mattingly's RSO or the hired consultant, and without telling either of those individuals that he was prohibited from NRC-licensed activities. Mr. Ficek hired the independent consultant, directed the consultant's activities, and ultimately, deliberately placed Mattingly in violation of the Confirmatory Order. Mr. Ficek's supervision of the consultant had a direct impact on Mattingly's radiation safety program and training program for the safe use of the radiographic exposure devices.

A third example of Mr. Ficek's continuing NRC-licensed activity involved his response to the lost radiographic exposure device that gave rise to the July 2009 NRC inspection. The NRC found that immediately after the police response to the Mattingly facility on June 22, 2009, during which the recovered lost radiographic exposure device was returned to Mattingly, Mr. Ficek directed the RSO to go to a temporary job location to conduct radiography operations while Mr. Ficek took on the RSO's duties to determine the NRC reporting requirements for the lost device. Mr. Ficek then failed to research the requirements, but two days later wrote and signed the NRC-required report, including Mattingly's corrective actions, after the NRC contacted the RSO. Because Mr. Ficek had not informed the RSO that he was prohibited from NRC-licensed activities, the RSO was not aware that Mr. Ficek could not conduct RSO duties. Mr. Ficek's direction to the RSO to proceed to conduct radiography while he, Mr. Ficek, would research the NRC reporting requirements and develop the lost device report to the NRC violated his Confirmatory Order.

Finally, Mr. Ficek filed a radioactive material reciprocity request with the NRC Agreement State, North Dakota, on June 15, 2009, presenting the NRC license and approved procedures to

the Agreement State as bases for seeking reciprocity approval for conduct of radiographic operations within North Dakota. Mr. Ficek signed the application representing Mattingly. While Mr. Ficek is not prohibited from working in an Agreement State during his period of prohibition from NRC-licensed activities, he cannot present himself to Agreement States as an NRC license representative when he is prohibited from NRC-licensed activities.

III

Based on the above, the NRC found that Mr. Mark M. Ficek, the President of Mattingly Testing Services, Inc., has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused the Licensee to be in violation of Confirmatory Order (EA-08-271) and NRC Increased Controls Order (EA-05-090). Also, the NRC found that Mr. Mark M. Ficek has deliberately provided to an NRC inspector and investigator information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10(a)(2). Further, the NRC found that Mr. Mark M. Ficek continued to engage in NRC-licensed activities after he was prohibited from such activities, in violation of Confirmatory Order (IA-08-055).

Given the current violations, Mr. Ficek's previous deliberate misconduct, including repeatedly providing incomplete and inaccurate information to the NRC, and a number of non-willful violations, the NRC lacks reasonable assurance that the Licensee can safely conduct licensed activities under License 25-21479-01, and so, in a related action, the NRC is issuing an order to the Licensee revoking the NRC license. The NRC must be able to rely on Mattingly, its officers, and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Ficek's action in causing the Licensee to violate two orders and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC

requirements to protect the public health and safety and to provide complete and accurate information to the NRC.

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 will be protected if Mr. Mark M. Ficek were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health and safety interest require that Mr. Mark M. Ficek be prohibited from any involvement in NRC-licensed activities for a period of 7 years from the date of this Order. Additionally, for a period of 3-years after the 7-year period of prohibition, Mr. Ficek is required to notify the NRC of his first employment in NRC-licensed activities or his becoming involved in NRC-licensed activities at least 10 days before becoming involved in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202(a)(5), I find that the deliberate and repetitive nature of Mr. Ficek's conduct is such that the public health and safety interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Mark M. Ficek is prohibited for 7 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State Licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Ficek is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this Order to the employer.

3. After the 7-year period of prohibition has expired, and for a 3-year period thereafter, Mr. Ficek shall, at least 10 days prior to beginning employment involving NRC-licensed activities or becoming involved in NRC-licensed activities, as defined in paragraph IV.1. above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Ficek shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Ficek of good cause. Upon issuance of this Order (Effective Immediately), the Order Prohibiting Involvement in NRC-Licensed Activities, IA-08-055, dated March 6, 2009, is rescinded.

V

In accordance with 10 CFR 2.202, Mr. Ficek must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, Mr. Ficek and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown,

consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a hearing is requested by Mr. Ficek or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Ficek, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and

access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the

NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike,

Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Mr. Ficek requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date

this Order is published in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, This 2nd day of September 2010

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman, Director
Office of Enforcement