

December 15, 2000

IA-00-034

David Fitterer
Stork/Twin City Testing
662 Cromwell Avenue
St. Paul, MN 55114-1776

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT 030-04983/2000001(DNMS); NRC OFFICE OF
INVESTIGATIONS CASE NO. 3-2000-007)

Dear Mr. Fitterer:

This refers to the special inspection conducted January 25 through February 24, 2000, and the subsequent investigation by NRC's Office of Investigation (OI). The inspection reviewed Stork/Twin City Testing's (Stork) radiography operations at a temporary job site in Plymouth, Minnesota and identified an apparent violation of NRC requirements for failing to have two qualified individuals present when conducting radiographic operations at temporary job sites. The purpose of the OI investigation was to determine whether Stork deliberately violated NRC requirements. The OI investigation was completed on June 9, 2000, and concluded that between June 27, 1998 and December 30, 1999, you deliberately allowed radiographic operations at a temporary job site with only one qualified individual present. Our July 28, 2000, letter discussed the apparent violation, our decision to hold a predecisional enforcement conference with you, and provided you a summary of the OI investigation.

On August 16, 2000, a closed, transcribed predecisional enforcement conference was conducted in the Region III Office in Lisle, Illinois with you to discuss the apparent violation, its significance, the root cause, and your corrective actions.

Based on the information developed during the inspection and investigation, and the information provided during the conference, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice)(Enclosure 1). In summary, while you were the radiation safety officer (RSO) at Stork, you deliberately allowed radiographic operations to be conducted at a temporary job site with only one qualified individual between June 27, 1998 and December 30, 1999. Your deliberate actions placed Stork in violation of 10 CFR 34.41, "Conducting Industrial Radiographic Operations," and you in violation of 10 CFR 30.10, "Deliberate Misconduct." Enclosure 2 includes a copy of the letter and Notice of Violation issued to Stork. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the "General Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, November 9, 1999, at Severity Level III.

In determining the appropriate sanction to be assessed in this case, the NRC staff considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consulting with the Director, Office of Enforcement, and after considering the circumstances of this case, including the facts that: (1) the actual safety significance was low, as the facilities appeared to meet or would meet with minor modifications or limitations on use the requirements of a permanent radiographic installation; (2) you indicated during the conference that you understand the significance of your actions; and (3) Stork took action to remove you as RSO, I have decided to issue the enclosed Notice of Violation.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or civil action.

The NRC has concluded that information regarding the reason for the violation and the corrective actions taken and planned to correct the violation and prevent recurrence has been adequately addressed. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

Please feel free to contact Mr. Geoffrey Wright, of my staff if you have any questions. Mr. Wright can be contacted at telephone number (630) 829-9500 or (800) 522-3025.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/ James L. Caldwell for

J. E. Dyer
Regional Administrator

Enclosure: 1. Notice of Violation
2. Letter and Notice of Violation to
Stork/Twin City Testing

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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SECY

CA

W. Travers, EDO

C. Paperiello, DEDMRS

D. Dambly, OGC

W. Kane, NMSS

B. Smith, NMSS

J. Lubinski, OE

Enforcement Coordinators

RI, RII, and RIV

R. Paul, OI:RIII

OE

OE:EA (2)

RAO:RIII

PAO:RIII

SLO:RIII

OAC:RIII

Docket File

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|--------|----------|--|------------------|--|-----------------|--|----------|--|
| OFFICE | RIII | | OGC ¹ | | OE ² | | RIII | |
| NAME | Pederson | | Dambly | | Borchardt | | Dyer | |
| DATE | 12/15/00 | | 12/11/00 | | 12/11/00 | | 12/15/00 | |

OFFICIAL RECORD COPY

¹OGC concurrence received from S. Chidake, OGC, on December 11, 2000

² OE concurrence received from J. Lubinski, OE, on December 11, 2000.

Notice of Violation

Mr. David Fitterer
Stork/Twin City Testing

IA 00-034

During an NRC inspection conducted January 25 through February 24, 2000, and an investigation conducted between February 7 and June 9, 2000, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, November 9, 1999, the violation is listed below:

10 CFR 30.10(a)(1) requires, in part, that any licensee or employee of a licensee, who knowingly provides to any licensee materials, or other goods or services that relate to a licensee's activities in this part, may not engage in deliberate misconduct that causes or would have caused a licensee to be in violation of any term, condition, or limitation of any license issued by the Commission.

10 CFR 30.10(c)(1) states, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows would cause a licensee to be in violation of any term, condition or limitation of any license issued by the Commission.

10 CFR 34.41(a) requires that whenever radiography is performed at a location other than a permanent radiographic installation, i.e., a temporary job site, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of section 34.43(c). The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

Contrary to the above, between June 27, 1998 and December 30, 1999, you engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 34.41(a) in that you authorized radiography to be performed at a temporary job site, a location other than a permanent radiographic installation, with only one qualified individual present. Specifically, while you knew that 10 CFR 34.41(a) requires that two individuals be present during radiography operations at locations other than permanent radiographic installations, i.e., temporary job sites, you authorized radiography to be performed within two rooms at a client's facility in Plymouth, Minnesota, by only one qualified radiographer at each room. Further, you knew that these rooms had not been reviewed and approved by the NRC to qualify as permanent radiographic installations. (010103)

This is a Severity Level III violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved has been adequately addressed. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond,

clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, Lisle, Illinois 60532- 4351, within 30 days of the date of the letter transmitting this Notice.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). Therefore, to the extent possible, the response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

Dated this 15th day of December 2000.