



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

February 28, 2003

IA-02-051

John Herman
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: NRC INVESTIGATION NO. 1-2001-031

Dear Mr. Herman:

This refers to the investigation conducted by the NRC Office of Investigations (OI) regarding, in part, your activities at United Evaluation Services (UES), previously known as Accurate Technologies Incorporated. A factual summary of the results of the OI investigation was sent to you as an attachment to a November 5, 2002, letter from the NRC. As a result of the investigation, the NRC determined that you knowingly performed radiography while uncertified and without the presence of a certified radiographer, and deliberately made false statements to OI to conceal your activities; and that you deliberately backdated or created other documents before an NRC inspection.

A predecisional enforcement conference was held with you on December 12, 2002, to discuss the apparent violations. At the conference, you admitted that on September 8, 2001, you had performed radiography while uncertified, without a certified radiographer present, contrary to your original statements to an OI investigator on April 24, 2002. You stated that you performed the radiography on September 8, 2001, because you were instructed to do the job by your superiors and you thought you were qualified to perform the radiography even though you were not certified. The NRC does not find your assertion credible, given your several years of training and experience in the field of radiography, sufficient to know that a certification was required to perform radiography.

You also admitted at the conference that you had backdated and/or created documents on October 9, 2001, before an NRC inspection. Specifically, you dated a refresher training examination with an inaccurate date of September 11, 2001.

Based on the results of the OI investigation and the information you provided at the conference, the NRC has determined that you knowingly performed radiography while uncertified and that you deliberately backdated or created documents before an NRC inspection. As such, your deliberate actions caused UES to be in violation of: (1) 10 CFR 34.46 which requires that whenever a radiographer's assistant uses radiographic exposure devices, he shall be under the personal supervision of a radiographer; and (2) 10 CFR 30.9 which requires that information required by the license to be maintained shall be complete and accurate in all material respects.

10 CFR 30.10(a)(1) prohibits licensee employees from engaging in deliberate misconduct that causes a licensee to be in violation of any regulation or license condition. In addition, 10 CFR 30.10(a)(2) prohibits licensee employees from submitting information that the person submitting the information knows to be inaccurate. Therefore, your deliberate actions constituted violations of 10 CFR 30.10. Accordingly, the NRC considered taking action directly against you. However, after considering that you were previously certified to perform radiography, you were not in a supervisory position at UES, and you had been directed to engage in the deliberate misconduct by your superiors, the NRC has decided not to take enforcement action against you in this case.

Notwithstanding this decision, since the NRC has determined that your actions caused deliberate violations of NRC requirements, you should be aware that any similar actions in the future involving NRC licensed activities at a licensed facility, whether identified by your employer, or by the NRC during an inspection or investigation, could result in significant enforcement action against you.

You are not required to respond to this letter. However, should you choose to respond, your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA, 19406, and marked "Open by Addressee Only," within 30 days of the date of this letter.

This letter, and your response, if you choose to submit one, will not be made publically available either electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). However, you should be aware that all final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

If you have any questions concerning this matter, please contact Mr. John Kinneman at 610-337-5252.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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