

January 24, 2005

EA 05-003

Mr. William Soucy, President
Materials Testing Incorporated
200 Rowe Avenue
Milford, Connecticut 06460

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 030-19515/2004-001)

Dear Mr. Soucy:

This letter refers to the routine unannounced NRC inspection conducted between December 1, 2004, and December 22, 2004, at your facility located in Milford, Connecticut. The enclosed inspection report documents the findings of the inspection, which were discussed with Mr. Michael Kelly of your staff on December 22, 2004.

Based on the findings from this inspection, the NRC has determined that a violation of NRC requirements occurred. The violation, which is cited in the enclosed Notice of Violation (Notice) and inspection report, involves the failure to secure, control or maintain constant surveillance of licensed material. Specifically, during an inspection at a temporary job site in Bridgeport, Connecticut, on December 2, 2004, the NRC concluded that over a period of approximately two months prior to this inspection, a Humbolt nuclear gauge containing 10 millicuries of Cs-137 and 40 millicuries of Am-241 was routinely not secured or controlled while being stored in an unlocked employee's vehicle and not under the direct surveillance of the authorized user.

On January 12, 2005, Mr. John Kinneman of my staff informed you and Mr. Michael Kelly, your Radiation Safety Officer, that this violation was being considered for escalated enforcement action, and the NRC did not need any additional information to make an enforcement decision. Mr. Kinneman also provided you an opportunity to attend a predecisional enforcement conference or to provide a written response, prior to the NRC determining appropriate enforcement action. During that conversation, you declined the opportunity to attend a conference or to provide a written response.

Although the nuclear gauge case was kept locked by the authorized user when stored in the vehicle, and it was unlikely that unauthorized persons came into direct contact with the material, this violation is of concern to the NRC because (1) the failure to control radioactive material could result in the loss or theft of the material since only a fitted, vinyl cover hid the nuclear gauge from view and deterred unauthorized removal; and (2) unintended radiation doses to members of the public could occur if the source was not in its shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,000 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) immediately securing the nuclear gauge; (2) coaching the authorized user relative to the appropriate security requirements for the nuclear gauge; (3) modifying the vehicle to accommodate locking the nuclear gauge to the vehicle bed; and (4) performing an assessment to assure that this security situation did not exist for vehicle storage of other gauges.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation without a civil penalty for this Severity Level III violation. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and the enclosed inspection report. Therefore, you are not required to respond to this violation 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and 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/reading-rm/adams.html> (the Public Electronic Reading Room). (Note: Public access to many documents in ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC website for updates on the resumption of ADAMS access to all documents.) 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>; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

We appreciate your cooperation in this matter.

Sincerely,

/RA/ JTW For
Samuel J. Collins
Regional Administrator

Mr. William Soucy

3

Docket No. 030-19515

License No. 06-19909-01

Enclosures:

1. Notice of Violation
2. NRC Region I Inspection Report 030-19515/2004-001

cc w/encls:

State of Connecticut

Mr. William Soucy

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Enforcement Coordinators RII, RIII, RIV

SGagner, OPA

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ENCLOSURE 1

NOTICE OF VIOLATION

Materials Testing Incorporated
Milford, Connecticut

Docket No. 030-19515
License No. 06-19909-01
EA 05-003

Based on an NRC inspection conducted between December 1, 2004, and December 22, 2004, a violation of NRC requirements was identified. The violation was discussed with the licensee during an exit meeting on December 22, 2004. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is set forth below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, the licensee failed to adequately secure from unauthorized removal or access, licensed material being stored in a vehicle routinely left unattended in unrestricted areas. Specifically, for an indeterminate number of instances over a period of approximately two months prior to December 2, 2004, a Humbolt nuclear gauge (serial number 3267) containing 10 millicuries of Cs-137 and 40 millicuries of Am-241 was routinely not secured or controlled while being stored in an unlocked employee's vehicle and not under the direct surveillance of the authorized user.

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

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter transmitting this Notice, and in NRC Inspection Report No. 030-19515/2004-001. 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, EA 04-219" 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 I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest the violation, 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.

If you choose to respond, your response 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or

safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 24th day of January 2005

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No.	03019515/2004001
Docket No.	03019515
License No.	06-19909-01
Licensee:	Materials Testing, Inc.
Address:	200 Rowe Avenue Milford, Connecticut 06460
Other Locations Inspected:	871 Stafford Road, Eagleville, CT (satellite office) Stop and Shop Parking Lot, Kings Highway, Bridgeport, CT (temporary job site)
Inspection Dates:	December 1-2, 2004 (onsite inspection), December 22,2004 (phone conversation)

Inspector: _____/RA/_____
James Schmidt
Health Physicist

_____01/24/2005_____
date

Approved By: /RA/ 01/24/2005
John D. Kinneman, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety
date

EXECUTIVE SUMMARY

Materials Testing, Inc.
NRC Inspection Report No. 03019515/2004001

Between the dates of December 1, 2004 and December 22, 2004, a routine inspection of Materials Testing, Inc. was conducted. Materials Testing, Inc. is a small testing company of about forty employees, fourteen of whom are authorized users of 14 nuclear gauges owned by the licensee. The licensee maintains permanent nuclear gauge storage locations in Milford and Eagleville, Connecticut, and is authorized to use and store the nuclear gauges at temporary job sites anywhere in the United States where the NRC maintains jurisdiction.

During the inspection at a temporary job site in Bridgeport, Connecticut, on December 2, 2004, the NRC inspector determined that a Humboldt nuclear gauge (serial number 3267) containing 10 millicuries of Cs-137 and 40 millicuries of Am-241 was routinely not secured or controlled while being stored in an unlocked employee's vehicle and not under the direct surveillance of the authorized user. The inspector concluded that this situation occurred an indeterminate number of instances over a period of approximately two months prior to this inspection. This represents an apparent violation of NRC regulations. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

No other apparent NRC violations or safety concerns were identified during the inspection.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector interviewed staff personnel and reviewed select records to evaluate the program organization and scope.

b. Observations and Findings

Materials Testing, Inc. is a small testing company that has a total of about forty employees. These employees, along with the nuclear gauges being used, are assigned to one of two office locations: the main office located at 200 Rowe Avenue, Milford, Connecticut, and a branch office located at 871 Stafford Road, Eagleville, Connecticut. Michael T. Kelly, the RSO/quality assurance manager, reports to the company president/owner William Soucy. Also reporting to the company president are two work managers: Steve Minnock and Brian Kerns for the Milford and Eagleville offices respectively. The licensee maintains fourteen Humboldt nuclear gauges and has a trained authorized user staff of 14 persons.

The nuclear gauges are assigned to authorized users and are used on a daily basis at temporary job sites within the state of Connecticut. Authorized users normally transport the nuclear gauges in privately owned vehicles.

RSO involvement in the program was found to be adequate. All authorized users were formally trained, licensed material inventories and leak tests were complete and up-to-date, and annual program reviews as required by 10 CFR 20.1101(c) were routinely being conducted.

Discussions with the licensee indicated that no significant program changes are anticipated in the foreseeable future.

c. Conclusions

No violations or safety concerns were identified. The scope of operations conducted by this licensee was consistent with that authorized by the license. The management arrangement and RSO involvement in the radiation safety program was found to be adequate to support the safe use of licensed material.

II. Material Security

a. Inspection Scope

The inspector interviewed staff personnel and physically evaluated the physical facilities/hardware used to provide licensed material security.

b. Observations and Findings

The licensed material security program for the two permanent facilities was found to be adequate, however, an issue of licensed material security was identified at the temporary job site inspected. During this segment of the inspection, it was identified that the authorized user's privately owned pickup truck was not capable of having its covered bed locked (i.e. neither the tailgate nor the bed tarp was able to be locked). When asked how the nuclear gauge assigned to the individual (Humboldt 5001C, serial number 3267) was being secured when not under the direct surveillance of the authorized user, the authorized user stated that the nuclear gauge, locked in its container, was being kept in the covered truck bed. No chains/locks were installed to prevent theft of the nuclear gauge in its locked case. This is an apparent violation of 10 CFR 20.1801 in that when the authorized user was not with the nuclear gauge being stored in the truck bed, it was not secured from authorized removal or access as required. Access to the nuclear gauge could have been achieved by either unsnapping the vinyl bed cover or opening the tailgate.

The need to maintain security of licensed material was discussed with the authorized user. He confirmed that he was trained to keep his unattended nuclear gauge locked in his personal vehicle however he assumed since the cover hid the nuclear gauge from sight, it provided the same level of security that was provided when he locked the gauge in the trunk of his previously owned vehicle. The security of the nuclear gauge in question was immediately discussed with the Material Testing President who directed the individual to return to the Milford office so that the truck bed could be modified to accept a chain and lock configuration to support locked security as required. A review of the Material Testing instruction manual maintained at the temporary job site identified that for a pickup, the gauge was to be secured in the back of the truck and that the user was not to leave the gauge unsecured or unlocked at any time.

On December 22, 2004, this apparent violation was discussed by telephone with the RSO (who was not available during the onsite segment of the inspection). He stated that material security problem found at the temporary job site is not consistent with management expectations or previous training provided each authorized user which clearly states that nuclear gauges must be locked in or onto each vehicle to prevent theft. He stated that this event occurred because the authorized user recently replaced his vehicle and did not properly add a security mechanism to support this requirement. He reported that the interview/coaching session held with the employee revealed that the employee changed his vehicle to the pickup truck about eight weeks before the

security problem was identified. He also stated that all of the existing vehicles being used to transport nuclear gauges were inspected and the only vehicle found to be deficient was that identified during the NRC inspection. This vehicle was altered to accept a chain and lock before it was reused to transport/store nuclear gauges. The RSO stated that plans are in place to review this material security violation with all authorized users before year's end.

c. Conclusions

One apparent NRC violation was identified for failure to provide the appropriate level of security for licensed material being stored outside a restricted area during periods when the licensed material was not being provided constant surveillance.

III. Exit Meeting

An exit meeting was held by telephone with the RSO on December 22, 2004. The licensee was informed that the inspection resulted in a single apparent violation of NRC regulations. The facts associated with the apparent violation were discussed with the licensee. The licensee stated that he understands the nature of the apparent violation found during the inspection and does not dispute any of the facts reported relative to the apparent violation. A brief overview of the enforcement process was discussed with the licensee and the exit was concluded.

PARTIAL LIST OF PERSONS CONTACTED

Use the following identification symbols:

Individual(s) present at entrance meeting

* Individual(s) present at exit meeting by phone on 12/22/04

Michael Kelly - Materials Testing RSO*

Bryan Kerns - Materials Testing work manager

Steve Minnock, Materials Testing work manager

William Soucy - Materials Testing President#

Naveed Syed - Materials Testing technician