

January 26, 2005

EA 05-003

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

SUBJECT: CORRECTION TO LETTER DATED JANUARY 24, 2005, TRANSMITTING
NOTICE OF VIOLATION

Dear Mr. Soucy:

Our letter dated January 24, 2005, transmitted a Notice of Violation and Inspection Report No. 030-19515/2004-001. In paragraph 5 of the letter, the second sentence is repeated twice. Enclosed is a corrected copy of our January 24, 2005 letter without that administrative error.

We are sorry for this inconvenience.

Sincerely,

/RA/ JWiggins for

Samuel J. Collins
Regional Administrator

Docket No. 030-19515
License No. 06-19909-01

Enclosure: Corrected Letter

cc w/encls:
State of Connecticut

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/ JWiggins 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

HBell, OIG

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OFFICE	RI/ORA	RI/ORA	RI/DNMS	RI/DNMS	RI/ORA
NAME	JWray	DHolody	JKinneman	GPangburn	KFarrar
DATE	1/19/05	01/21/05	1/19/05	01/20/05	1/21/05

OFFICE	RI/RA				
NAME	SCollins				
DATE	01/24/05				

OFFICIAL RECORD COPY

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