UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of the | ) | |
| | ) | |
| Professional NDE | ) | |
| & Welding Services, Inc. | ) | |
| Carr 838 Km. 5.4 Bldg 1761 | ) | P.S. Docket No. 05-01-PF |
| 4th Floor Monacillo | ) | |
| San Juan, PR 00926 | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Mr. Luis A. Martinez | ) | |
| Carr 838 Km. 5.4 Bldg 1761 | ) | |
| 4th Floor Monacillo | ) | |
| San Juan, PR 00926 | ) | |
| | ) | |
| Respondents. | ) | |

# COMPLAINT

The reviewing official of the United States Nuclear Regulatory Commission (NRC) under the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) and the NRC's Program Fraud Civil Remedies regulations (10 C.F.R. Part 13) has determined that there is adequate evidence to believe that Respondents Professional NDE & Welding Services, Inc. (Professional NDE), and Luis A. Martinez, President of Professional NDE, submitted false, fictitious, and fraudulent written statements and claims to the NRC in order to obtain financial benefits to which they are not entitled.

The NRC alleges as follows:

1. The NRC and the NRC reviewing official have the authority to pursue this complaint under the Program Fraud Civil Remedies Act and NRC's Program Fraud Civil Remedies regulations.

2. Respondent Professional NDE holds an NRC materials license for the possession and use of “byproduct material,” as defined in section 11e. of the Atomic Energy Act of 1954, 42 U.S.C. § 2014(e), for industrial radiography operations. This license was issued to Respondent Professional NDE in calendar year 2000.

3. Under Part 171 of Title 10 of the Code of Federal Regulations, the NRC charges annual fees to holders of NRC licenses. The NRC regulation that addresses annual fees for materials licensees, 10 C.F.R. § 171.16, provides that a materials licensee may pay a reduced annual fee if it qualifies as a small entity. The NRC size standards for small entity status are defined in 10 C.F.R. § 2.810, which provides that the standards for a for-profit concern that provides a service or is not a manufacturing concern is based on the company’s gross annual receipts over its last three completed fiscal years (FY). If a company has not been operating under its NRC materials license for three fiscal years, the annual fee is based on the period for which the company has been operating under its license.

4. For FY 2001 through FY 2005, 10 C.F.R. § 171.16 specified a maximum annual fee depending upon the licensee’s gross receipts. For a small entity with gross receipts between $350,000 and $5,000,000, the maximum annual fee was $2,300. For a small entity with gross receipts less than $350,000, the maximum annual fee was $500. For these years, these amounts were also set forth in NRC Form 526, the NRC form for "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171,” which must be submitted to the NRC for each year in which a company claims small entity status.

5. Respondent Luis A. Martinez, Carr 838 Km. 5.4, 4th Floor Monacillo, San Juan, Puerto Rico 00926, was the President of Respondent Professional NDE, also of Carr 838 Km. 5.4, 4th Floor Monacillo, San Juan, Puerto Rico 00926, at the time of the events relating to the false, fictitious, and fraudulent written statements and claims described herein, and he

continues to be its President. Respondent Professional NDE's business consists of welding, conducting quality assurance audits, providing nondestructive examination services, and providing tank inspection and engineering services. Other addresses that have been listed for Respondents Luis A. Martinez and Professional NDE are P.O. Box 1481, Trujillo Alto, PR 00977 and Carr 838 Km. 5.4 Landrou Bldg, 1761, 3rd Floor, Rio Piedras, PR 00924.

6. At the time the statements and claims that are the subject of this complaint were asserted, the Respondents knew or had reason to know that such statements and claims were false and fictitious. In the alternative, they acted in deliberate ignorance of the truth or falsity of the statements and claims or in reckless disregard of their truth or falsity.

7. By invoice dated May 5, 2001, the NRC billed Respondent Professional NDE $7,450 for its FY 2001 annual materials fee, based on the NRC fee schedule. The amount billed reflected that the company was entitled to a 50 percent prorated annual fee for FY 2001, because the original NRC license was issued in October 2000.

8. On May 16, 2001, the NRC received an NRC Form 526 signed on April 8, 2001, by Respondent Luis A. Martinez in his capacity as President of Respondent Professional NDE. In section 1 of this document, Respondent Luis A. Martinez certified that Respondent Professional NDE was a for-profit concern that provides a service or a concern not engaged in manufacturing, and that its average gross receipts had been less than $350,000 over its last three completed fiscal years. As shown on the NRC Form 526, annual average gross receipts of less than $350,000 entitled a company to an annual fee of $500.

9. Upon later investigation by the NRC’s Office of Inspector General (OIG), it was discovered that Respondent Professional NDE’s 2000 Corporate Tax Return listed gross sales for 2000 as $629,713, and in an interview conducted by OIG, Respondent Luis A. Martinez admitted that gross receipts of Respondent Professional NDE for 2000 totaled $402,922.23.

10. Consistent with the false certification on the NRC Form 526, on May 17, 2001, Respondent Professional NDE paid $500 to the NRC as the FY 2001 annual materials fee owed by the company. On May 30, 2001, Respondent Professional NDE was refunded $250 of the annual materials fee since the company was entitled to a 50 percent prorated fee, because its NRC license had been issued in October 2000. As shown on the NRC Form 526, the FY 2001 annual materials fee owed by small entities with average gross receipts between $350,000 and $5,000,000 over its last three completed fiscal years was $2,300. Because of the proration applicable to the annual fee owed by Respondent Professional NDE, the correct fee that should have been paid by the company was $1,150.

11. By invoice dated November 20, 2001, the NRC billed Respondent Professional NDE $12,500 for its FY 2002 annual materials fee.

12. On December 3, 2001, the NRC received an NRC Form 526 signed by Respondent Luis A. Martinez in his capacity as President of Respondent Professional NDE. In section 1 of this document, Respondent Luis A. Martinez certified that Respondent Professional NDE was a for-profit concern that provides a service or a concern not engaged in manufacturing, and that its average gross receipts had been less than $350,000 over its last three completed fiscal years. As shown on the NRC Form 526, annual average gross receipts of less than $350,000 entitled a company to an annual fee of $500.

13. Upon later investigation by OIG, it was discovered that Respondent Professional NDE's 2001 Corporate Tax Return listed gross sales for 2001 as $712,720, and in an interview conducted by OIG, Respondent Luis A. Martinez admitted that gross receipts of Respondent Professional NDE for 2001 totaled $644,787.25.

14. Consistent with the false certification on the NRC Form 526, on January 18, 2002, Respondent Professional NDE paid $500 to the NRC as the FY 2002 annual materials fee

owed by the company. As shown on the NRC Form 526, the FY 2002 annual materials fee owed by small entities with average gross receipts between $350,000 and $5,000,000 over its last three completed fiscal years was $2,300.

15. By invoice dated November 9, 2002, the NRC billed Respondent Professional NDE $13,700 for its FY 2003 annual materials fee.

16. On December 18, 2002, the NRC received an NRC Form 526 signed by Respondent Luis A. Martinez in his capacity as President of Respondent Professional NDE. In section 1 of this document, Respondent Luis A. Martinez certified that Respondent Professional NDE was a for-profit concern that provides a service or a concern not engaged in manufacturing, and that its average gross receipts had been less than $350,000 over its last three completed fiscal years. As shown on the NRC Form 526, annual average gross receipts of less than $350,000 entitled a company to an annual fee of $500.

17. Upon later investigation by OIG, it was discovered that Respondent Professional NDE's 2002 Request for Extension to File Tax Return listed gross sales for 2002 as $1,400,000, and in an interview conducted by OIG, Respondent Luis A. Martinez admitted that gross receipts for 2002 totaled $1,632,068.92.

18. Consistent with the false certification on the NRC Form 526, on December 24, 2002, Respondent Professional NDE paid $500 to the NRC as the FY 2003 annual materials fee owed by the company. As shown on the NRC Form 526, the FY 2003 annual materials fee owed by small entities with average gross receipts between $350,000 and $5,000,000 over its last three completed fiscal years was $2,300.

19. By invoice dated October 27, 2003, the NRC billed Respondent Professional NDE $12,200 for its FY 2004 annual materials fee.

20. On November 4, 2003, the NRC received an NRC Form 526 signed by Respondent Luis A. Martinez in his capacity as President of Professional NDE. In section 1 of this document, Respondent Luis A. Martinez certified that Respondent Professional NDE was a for-profit concern that provides a service or a concern not engaged in manufacturing, and that its average gross receipts had been less than $350,000 over its last three completed fiscal years.

21. Upon later investigation by OIG, it was discovered that Respondent Professional NDE's 2003 Corporate Tax Return listed gross sales for 2003 as $782,915, and in an interview conducted by OIG, Respondent Luis A. Martinez admitted that gross receipts of Respondent Professional NDE for 2003 were $2,468,798.66.

22. Consistent with the false certification on the NRC Form 526, on November 18, 2003, Respondent Professional NDE paid $500 to the NRC as the FY 2004 annual materials fee owed by the company. As shown on the NRC Form 526, the FY 2004 annual materials fee owed by small entities with average gross receipts between $350,000 and $5,000,000 over its last three completed fiscal years was $2,300.

23. By invoice dated October 30, 2004, the NRC billed Respondent Professional NDE $11,900 for its FY 2005 annual materials fee.

24. On November 8, 2004, the NRC received an NRC Form 526 signed by Respondent Luis A. Martinez in his capacity as President of Respondent Professional NDE. In section 1 of this document, Respondent Luis A. Martinez certified that Respondent Professional NDE was a for-profit concern that provides a service or a concern not engaged in manufacturing, and that its average gross receipts had been less than $350,000 over its last three completed fiscal years.

25. In an interview conducted by OIG, Respondent Luis A. Martinez indicated that gross receipts of Respondent Professional NDE for 2004 totaled $1,455,765.

26. Consistent with its false certification on the NRC Form 526, on December 1, 2004, Respondent Professional NDE paid $500 to the NRC as the FY 2005 annual materials fee owed by the company. As shown by the NRC Form 526, the FY 2005 annual materials fee owed by small entities with average gross receipts between $350,000 and $5,000,000 over its last three completed fiscal years was $2,300.

27. Respondent Luis A. Martinez's certifications, made by him to the NRC as President of Respondent Professional NDE and signed by him on April 8, 2001, December 3, 2001, December 18, 2002, November 4, 2003, and November 8, 2004, regarding Respondent Professional NDE's status as a small entity with average gross receipts of less than $350,000 over its last three completed fiscal years constituted false, fictitious and fraudulent statements and claims under 31 U.S.C. 3802(a).

28. As a direct result of the false, fictitious and fraudulent statements and claims made by Respondent Luis A. Martinez, acting in his capacity as President of Respondent Professional NDE, the annual fees that were paid to the NRC by Respondent Professional NDE, as described in paragraphs 5 to 27 above, totaled $2,250 ($250 for FY 2001 plus $500 for each year from FY 2002 to FY 2005). The amount that should have been paid was $10,350 ($1,150 for FY 2001 and $2,300 for each year from FY 2002 to FY 2005), and thus, Respondent Professional NDE underpaid its annual fees for FY 2001 to FY 2005 by $8,100.

PENALTIES

29. Based on the false statements and claims to which reference has been made in paragraphs 27-28, the maximum amount of penalties for which the Respondents may be held liable under the Program Fraud Civil Remedies Act and NRC Program Fraud Civil Remedies

regulations is $46,200 ($30,000 in penalties, consisting of $6,000 for each of the five false claims, plus $16,200, consisting of twice the amount of avoided payments, which is $8,100). Based on Respondent Luis A. Martinez's cooperation in providing documents to OIG and considering the disproportion between the amount that he failed to pay and the total amount that could be assessed, the NRC requests judgment in the amount of $15,000. In addition, where more than one person is liable for making such a false claim, each person may be held liable for a civil penalty. Therefore, the NRC requests that Respondents be held jointly and severally liable for the amount awarded. No proof of specific intent to defraud is required to establish such liability.

PROCEDURES

30. Respondents have the right to request a hearing by filing a written answer to the allegations and proposed penalties and assessments in this complaint within 30 days of the service of the complaint.

31. An answer to the complaint must be filed with the reviewing official, Stephen G. Burns, Deputy General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

32. Respondents have the right to be represented at the hearing by an attorney or other representative.

33. A copy of the NRC regulations on procedures governing hearings under the Program Fraud Civil Remedies Act (10 C.F.R. Part 13) is attached.

34. Failure to file an answer within 30 days of service of this complaint may result in the imposition of the proposed penalties without right to appeal as provided in 10 C.F.R. § 13.10.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

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STEPHEN G. BURNS
NRC Reviewing Official and Deputy General Counsel
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Rockville, Maryland,

this 11th day of January 2006