



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

February 23, 2007

EA-06-259

Mr. Brent Mockli
Radiation Safety Officer
Universal Testing, LLC
393 South Main
Clearfield, Utah 84015

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$6,500 NRC INSPECTION REPORT No. 150-00043/06-001 AND
INVESTIGATION REPORT OI 4-2006-027

Dear Mr. Mockli:

This refers to the predecisional enforcement conference conducted on February 8, 2007, in the NRC Region IV office in Arlington, Texas. The purpose of the conference was to discuss the circumstances surrounding a February 18, 2006, event involving the failure to secure an industrial radiography exposure device containing licensed material. The preliminary findings from our inspection and investigation were discussed with you during a telephonic exit briefing on January 25, 2007, and the subject inspection report was dated January 25, 2007.

During the conference, you acknowledged the violation and you acknowledged that the radiographer had been trained and should have been aware that the device should not have been left unsecured in the open bed of his pickup truck. Also, you provided and discussed your corrective actions. Your corrective actions included taking disciplinary action against the radiographer involved, emphasizing to all employees the importance of proper transport and storage procedures, and conducting unannounced inspections of your radiographers in the field. You also emphasized that Universal Testing considers this a significant infraction and, in the future, will take disciplinary action for similar infractions.

Based on the information developed during the inspection and investigation, as well as the information you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. In summary, the violation involves the failure to secure from unauthorized removal or access licensed material that is stored in an unrestricted area. This occurred on February 18, 2006, when one of your radiographers was transporting a radiography exposure device and stopped at a local bar in Casper, Wyoming. The device was left unattended and unsecured in the open bed of a pickup truck for about 1 ½ hours when the radiographer was inside the bar. Later that evening, the radiographer was involved in a traffic accident, resulting in his arrest and the impoundment of the pickup truck (with the unsecured radiography source in the bed of the truck) by the Wyoming State Police. The radiographer informed the Wyoming State Police about the radioactive source and requested that the truck be locked inside a garage at the

impound yard. The following day, the radiographer was released and picked up his truck. The radiographer could not control or maintain constant surveillance over the exposure device while the truck was parked at the bar and later when the truck was at the impound yard. Of particular concern is that the individual knew that he should have locked the device inside the cab of the truck when he could not maintain control or surveillance over the radioactive source. As such, the NRC has concluded that willfulness is associated with the violation.

The NRC considers the violation significant because the material was vulnerable to unauthorized access or removal. Additionally, members of the public could be exposed from radioactive material that is inadequately secured. The violation is also significant because willfulness was involved. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$6,500 is considered for a Severity Level III violation. Because willfulness was involved with the violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC determined that Universal Testing is not deserving of identification credit because the NRC identified the violation. The NRC has determined that Universal Testing is deserving of corrective action credit based on the actions you have taken to prevent recurrence.

Therefore, to emphasize the importance of securing radioactive material from unauthorized access and to deter willful violations of NRC requirements, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$6,500. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

One option is that you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

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 NRC's document system (ADAMS), accessible from

the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Docket No. 150-00043
General License Pursuant to 10 CFR 150.20

Enclosures:

- 1) Notice of Violation and Proposed Imposition of Civil Penalty
- 2) NUREG/BR-0254 Payment Methods (Licensee only)
- 3) ADR Brochure (Licensee only)

cc (Enclosure 1 only):
Utah Radiation Control Program Director
Wyoming Radiation Control Program Director

DISTRIBUTION:

RIDSSECYMAILCENTER
 RIDSEDOMAILCENTER
 RIDSOGCMailCENTER
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 RIDSOEMailCENTER
 RIDSNMSSIMNS
 RIDSOPAMail
 RIDSOIGMailCENTER
 RIDSRGN1MAILCENTER
 RIDSRGN3MAILCENTER

via e-mail:

M Haire	MVasquez - GMV	N Hilton, OE (when ADR is offered)
R4ALLEGE	B Mallett - BSM1	
P Gwynn - TPG	V Dricks - VLD	
KFuller - KSF	B Maier - WAM	
LWert - LXW1	J Whitten - JEW1	
MHerrera - MSH3	V Campbell - VHC	
C Cain - CLC	B Spitzberg - DBS	
R Leonardi	L McLean - MLM1	
G Morell - GKM	M Burgess - MLB5	
S Merchant - OE	L Sreenivas, OE	
D White		

SUNSI Review Completed: gmv ADAMS: X Yes No Initials: gmv
 X Publicly Available Non-Publicly Available Sensitive X Non-Sensitive

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ACES	C:NMIB	D:DNMS	RC	OE
M Vasquez	V Campbell	L Wert	K Fuller	C Carpenter
/RA/	/RA/	/RA/	/RA/	MKFahey for
2/8/2007	2/9/2007	2/12/2007	2/22/2007	2/21/2007
FSME	OGC	DRA	RA	
C Miller	M Bupp	P Gwynn	B Mallett	
M Burgess for	/RA via e/	/RA BSM for/	/RA/	
2/16/2007	2/20/2007	2/13/2007	2/13/2007	

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Universal Testing LLC
Clearfield, Utah

Docket No. 150-00043
License No. General License
Pursuant to 10 CFR 150.20
EA-06-259

During an NRC inspection and investigation which concluded on January 25, 2007, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 150.20(a) provides in part that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in Non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met. 10 CFR 150.20(b) requires in part that general licensees are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations and orders of the Commission.

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, on February 18 and 19, 2006, the licensee did not secure from unauthorized removal or limit access to a radiography exposure device (containing 85 curies of Ir-192) that was located in the open bed of a pickup truck when the radiographer was inside a local bar, and additionally, during the time the truck was impounded in a police impound yard where it remained all night until the following morning. Both of these areas are unrestricted areas, and the licensee did not control and maintain constant surveillance of this licensed material during these times.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$6,500 (EA-06-239)

Pursuant to the provisions of 10 CFR 2.201, Universal Testing LLC (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-06-259)" and should include for each alleged violation:

Enclosure 1

(1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) to the extent possible, it should not include any personal privacy or proprietary information, so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

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

Dated this 23rd day of February 2007