



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

March 20, 2007

EA-06-281

Mr. Charles Brignac
President
Accurate NDE and Inspection, LLC
209 Industrial Trace
Broussard, LA 70518

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$13,000 (NRC INSPECTION REPORT 150-00017/05-009 AND OI
INVESTIGATIVE CASE NO. 4-2006-015)

Dear Mr. Brignac:

This refers to the predecisional enforcement conference conducted on February 14, 2007, in the NRC Region IV offices in Arlington, Texas. The conference was conducted to review the circumstances surrounding three willful violations that were identified during an inspection conducted on December 20, 2005, and the subsequent investigation into the circumstances surrounding the violations. The inspection and investigative findings were described to you during a telephonic exit briefing on January 22, 2007.

During the February 14, 2007, conference, you acknowledged the violations and you described the corrective actions taken for the violations. In response to our concerns about the adequacy of your corrective actions as discussed at the conference, your radiation safety officer (RSO) provided us with additional information regarding your corrective actions in a letter dated February 19, 2007. Our review indicated that one of your corrective actions could cause you to be in violation of one of the requirements of the NRC's Increased Control Order. Specifically, your February 19, 2007, letter stated that you would provide offshore crews with a chain and a pad lock for bucket jobs (where no dark room is provided). But, for radiography exposure devices above a specific activity, it appears that this would not meet the requirement to have two independent physical controls that form tangible barriers to secure the material from unauthorized removal. This prompted us to contact your Operations Manager on March 1, 2007, to ensure compliance with this specific requirement and to discuss other deficiencies in your corrective actions. Following this NRC prompting, Accurate NDE provided additional corrective actions in its letter dated March 1, 2007.

Based on the information developed during the inspection and investigation, as well as the information that you provided during the conference, the NRC has determined that three violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations include failures to: (1) secure from unauthorized removal a

radiographic exposure device containing Ir-192 as required by 10 CFRs 20.1801 and 20.1802; (2) wear required personnel dosimetry during radiographic operations as required by 10 CFR 34.47(a); and (3) provide complete and accurate information on documents provided to an NRC inspector. In reviewing the circumstances associated with each violation, the NRC has concluded that willfulness is associated with all three violations.

Although there were no actual safety consequences to the violations, the first two violations did have the potential to result in safety consequences. The third violation had the potential to impede our inspector's ability to verify compliance with NRC requirements. These three violations are also significant because willfulness was associated with each of them. Willful violations are of concern to us because the NRC must rely on licensees and its employees to comply with NRC requirements even when the NRC is not present. Therefore, these three violations have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The current Enforcement Policy is included on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html, then select **Enforcement Policy**.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$6,500 is considered for a Severity Level III problem. Because willfulness is associated with the problem, 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. In this case, the NRC has determined that Accurate NDE is not deserving of Identification credit because the inspector identified the violations. In addition, the NRC has determined that Accurate NDE is not deserving of Corrective Action credit because your corrective actions were not comprehensive to prevent recurrence. In fact, your corrective actions could have caused you to be in violation of the NRC's Increased Control Order and prompted our March 1, 2007, call to your Operations Manager (as discussed above). Also, your corrective actions did not provide concrete steps to address the supervisory functions of its radiographers (e.g., ensuring the radiographer's assistant wears dosimetry as required, ensuring requirements are being followed, ensuring records were complete and accurate). Further, although Accurate NDE evaluated the radiation exposures around a radiographic exposure device to address the NRC's concern about the radiographer having the radiographic exposure device inside the sleeping quarters, Accurate NDE did not prohibit the practice or implement administrative controls to address the NRC's concern that this practice is not in keeping with the ALARA (As Low As Reasonably Achievable) principle.

Therefore, to emphasize the importance of prohibiting willful violations and of prompt identification and correction of violations, 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 (Notice) in twice the base amount of \$6,500 for a total of \$13,000 for the Severity Level III problem. 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.

Instead of providing a response to the Notice and Proposed Imposition of Civil Penalty, 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/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. 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 enclosure, 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 <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Docket No. 150-00017
License No. 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 - NUREG/BR-0317 (Licensee only)

cc (Enclosure 1 only):
Louisiana Radiation Control Program Director

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Accurate NDE & Inspection, LLC
Broussard, LA

Docket No. 150-00017
License No. General License Pursuant to
10 CFR 150.20
EA-06-281

During an NRC inspection and investigation which were concluded on January 22, 2007, violations of NRC requirements were 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 violations and associated civil penalty are set forth below:

- A. 10 CFR 20.1801 requires, in part, that the licensee shall 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, a controlled area is an area outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason. An unrestricted area is defined as an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on December 20, 2005, the licensee did not secure from unauthorized removal or limit access to a radiographic exposure device containing an iridium-192 sealed source that was being improperly stored on an offshore platform, which was in a controlled area or unrestricted area.

- B. 10 CFR 34.47(a) requires, in part, that the licensee not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Accreditation Program processor.

Contrary to the above, the licensee permitted an individual, who did not wear a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter during radiographic operations, to act as a radiographer's assistant. Specifically, the licensee performed industrial radiography on an oil/gas platform in offshore waters on December 18, 2005 and the radiographer's assistant did not wear the aforementioned dosimetry equipment.

- C. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

ENCLOSURE

Contrary to the above, on December 20, 2005, the licensee provided to the NRC inspector records with information that was not complete and accurate in all material respects. The daily radiation report was inaccurate because it indicated that the radiographer's assistant had the personnel monitoring equipment required by 10 CFR 34.47(a), when the assistant had left his required personnel monitoring equipment onshore. Specifically, the report documented the radiographer assistant's badge number (TLD), pocket ionization chamber serial number with the start and finish radiation exposure data, alarming ratemeter serial number, and verification of the alarming ratemeter's calibration and operability were all annotated in the daily radiation report, when the assistant radiographer did not have any of the aforementioned personnel monitoring equipment when he conducted radiography operations on December 18, 2005. This is material because this information inaccurately indicates compliance with 10 CFR 34.47(a).

This is a Severity Level III problem (Supplements IV, VI, and VII).
Civil Penalty - \$13,000. (EA-06-281)

Pursuant to the provisions of 10 CFR 2.201, Accurate NDE & Inspection, L.L.C., (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-06-281)" and should include for each alleged violation: (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 A. 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, proprietary, 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 20th day of March 2007

Accurate NDE and Inspection, LLC,
EA-06-281

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