



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

November 6, 2007

EA-06-259
EA-07-230

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

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC INSPECTION REPORT 150-00043/06-001 AND OI INVESTIGATION
REPORT NO. 4-2006-027)

Dear Mr. Mockli:

The enclosed Confirmatory Order is being issued to you as part of a settlement agreement between you and the NRC regarding an NRC enforcement action. By letter dated February 23, 2007, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 for a willful failure to secure an industrial radiography exposure device containing licensed material. Our February 23, 2007, letter offered you, in lieu of submitting the required response, the option of requesting Alternative Dispute Resolution (ADR) in an attempt to resolve any disagreements between you and the NRC. You requested ADR to resolve this matter with the NRC.

ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC currently employs is mediation. On July 25, 2007, an ADR mediation session was conducted between you and the NRC. Based on that mediation, you and the NRC reached a settlement agreement. In summary, you agreed that the violation cited in the February 23, 2007, Notice of Violation, did occur and that the violation involved willfulness on the part of the radiographer involved. You also agreed to take several corrective actions to prevent this violation from recurring. The NRC considers that the actions in the attached Confirmatory Order are sufficient to address our concerns, and has also agreed to reduce the civil penalty to \$500.

As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated October 29, 2007, you agreed to issuance of this letter and Confirmatory Order.

We note that, pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Universal Testing, LLC
EA-06-259; EA-07-230

- 2 -

Questions concerning this Confirmatory Order should be addressed to Mr. Michael Vasquez at 817-860-8121 or Ms. Karla Fuller at 817-860-8271.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure 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>. To the extent possible, any response you provide 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 at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

Sincerely,

/RA/

Leonard D. Wert
Acting Regional Administrator

Enclosure: Confirmatory Order

cc w/enclosure:
State of Utah Radiation Control Program Director

DISTRIBUTION:

RIDSSECYMAILCENTER
RIDSSEDOMAILCENTER
RIDSOGCMailCENTER
RIDSNMSSOD
RIDSOIMailCENTER
RIDSOCFOMailCENTER
RIDSRGN3MAILCENTER

RIDSOCAMailCENTER
RIDSOEMailCENTER
RIDSFSMEMailCENTER
RIDSOPAMail
RIDSOIGMailCENTER
RIDSRGN1MAILCENTER
OEWEB

bcc w/enclosures via e-mail:

EECollins	GMVasquez
TPGwynn	VLDricks
KDFuller	WAMaier
LDWert	JEWhitten
VHCampbell	CLCain
DBSpitzberg	NHilton, OE
MLMcLean	LSreenivas, OE
MLBurgess	SLMerchant - OE
DWhite, OI	SWoods, OE
MCMaier	R Leonardi

SUNSI Review Completed: gmv ADAMS: Yes No Initials: gmv

Publicly Available Non-Publicly Available Sensitive Non-Sensitive

S:\ras\aces\enforcement\...\Universal Testing\Conf_Order-from-ADR\Draft_Universal-Conf_Order.doc

SES	DD:DNMS	RC	DRA	RA
GMVasquez	LDWert	KDFuller	TPGwynn	EECollins
<i>/RAMCMaier for/</i>	<i>/RA/</i>	<i>/RA/</i>	<i>/RA/</i>	<i>/RA/</i>
8/15/07	8/16/07	8/22/07	8/27/07	10/15/07
FSME	OGC	D:OE	RA	
M Burgess	B Jones	C Carpenter	EECollins	
<i>/RA/</i>	<i>Jenny Longo for</i>	<i>N Hilton for</i>	<i>/RA LDWert for/</i>	
9/5/07	10/5/07	10/11/07	11/06/07	

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Universal Testing, LLC)	Docket No. 150-00043
Clearfield, Utah)	General License Pursuant to
)	10 CFR 150.20
)	EA-06-259; EA-07-230

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Universal Testing, LLC (Universal Testing) is the holder of a general license pursuant to 10 CFR 150.20 issued by the Nuclear Regulatory Commission (NRC or Commission). This general license was granted to Universal Testing at various times during calendar years 2005, 2006, and 2007.

II

An NRC inspection was conducted at your Clearfield, Utah, facility on April 4, 2006. Following that inspection, an investigation was initiated on May 8, 2006, by the NRC Office of Investigations (OI) in order to determine whether a radiographer employed by Universal Testing willfully violated NRC regulations.

Based on the results of the NRC inspection and OI investigation, the NRC determined that a violation of NRC requirements occurred. The violation involved a failure to secure an industrial

Enclosure

radiography exposure device containing licensed material as required by 10 CFR 20.1801 and 10 CFR 20.1802. The NRC also determined that the violation resulted from willful actions on the part of the radiographer involved.

III

In a letter dated February 23, 2007, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$6,500 for the violation. In the February 23, 2007, letter, the NRC offered Universal Testing the opportunity to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve issues associated with these violations. In response to the February 23, 2007, letter, Universal Testing requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and Universal Testing to resolve any differences regarding the matter.

An ADR session was conducted between Universal Testing and the NRC in Arlington, Texas, on July 25, 2007. During that ADR session, an Agreement in Principle was reached. The elements of the agreement consisted of the following:

1. Universal Testing will add one additional qualified person to conduct additional field audits of its radiographers. Universal Testing will conduct at least one unannounced field audit in NRC jurisdiction on each job where that job lasts more than 3 consecutive weeks.

2. For a period of 1-year from the date of this Confirmatory Order, Universal Testing will notify the NRC the same day that it accepts any contract to perform a job in NRC jurisdiction.
3. Within 30 days from the date of this Confirmatory Order, Universal Testing will develop and implement a disciplinary program with a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the rules. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns. The disciplinary program will include a requirement that at least one individual who is in possession of a radiography camera be capable of responding to a security alarm.
4. Universal Testing will develop, maintain, and implement a procedure for employees who are in possession of licensed material and who are away from the office, to notify company owners or managers of their location every evening. The intent of the notification is for the company to actively maintain knowledge of where licensed material is located every evening. Universal Testing will develop this procedure within 60 days of the date of this order. This procedure will include a requirement for reporting of safety and security concerns. The procedure will also include actions the company will take to find licensed material when it has not arrived at its expected location.
5. Within 1-year from the date of this Confirmatory Order, Universal Testing will discuss with the Non-Destructive Testing Manager's Association (NDTMA) the possibility of an industry-based program to share information about radiography employees. The concept would be for this industry-based program to assist radiography companies to determine the trustworthiness and reliability of individuals applying for employment.

6. Not later than 1-year from the date of this Confirmatory Order, Universal Testing will discuss with NDTMA the possibility of submitting an article or making a presentation to the membership. The article or presentation will address the conditions of this Confirmatory Order and the value it adds to overall safe and effective operations. Alternatively, Universal Testing will propose to make a presentation to the local Salt Lake City Chapter of the ASNT on the same subject. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article or presentation will be provided to the NRC Region IV office (in advance of the submittal) for review, comment, and concurrence.
7. Universal Testing has expressed its intent to continue seeking radiography business in NRC's jurisdiction.
8. If Universal Testing applies for an NRC license, Universal Testing will request that the conditions of this Confirmatory Order be incorporated into its license.
9. The above provisions would not apply to any existing NRC licensee that may purchase Universal Testing, LLC. Universal Testing will promptly notify NRC Region IV if any existing NRC licensee agrees to purchase Universal Testing.
10. In recognition of the extensive corrective actions, the NRC agrees to reduce the civil penalty originally proposed to \$500.

Some of the above conditions are clarified as indicated below. On October 29, 2007, Universal Testing consented to issuing this Order with the commitments, as described in Section IV below. Universal Testing further agreed that this Order is to be affective upon issuance and that it has waived its right to a hearing.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 2.205, 10 CFR Parts 20, 34, 150, and in Part 71 that references 49 CFR 177, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Within 30 days from the date of this Confirmatory Order, Universal Testing, LLC must pay the reduced civil penalty of \$500 in accordance with NUREG/BR-0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, a statement indicating when and by what method payment was made.
2. Universal Testing will add one additional qualified person to conduct additional field audits of its radiographers. Universal Testing will conduct at least one unannounced field audit in NRC jurisdiction on each job where that job lasts more than 3 consecutive weeks.
3. For a period of one year from the date of this Confirmatory Order, Universal Testing will notify the NRC the same day that it accepts any contract to perform a job in NRC jurisdiction.
4. Within 60 days of the date of this Order, Universal Testing will develop, maintain, and implement a procedure that contains the following requirements.

(A) On occasions in which individuals are traveling away from the office, at least one individual who is in possession of a radiography camera shall be capable of responding to a security alarm 24 hours a day.

(B) Employees who are traveling away from the office shall contact company managers every evening and provide company managers with the physical location of the employee and the radiography camera in order for the company to actively maintain knowledge of where licensed material is located.

(C) The procedure will specify the actions company managers will take to locate licensed material when it has not arrived at its expected location and/or when an individual fails to make the required evening contact.

(D) The procedure will require employees to report safety and security concerns.

5. Within 30 days from the date of this Confirmatory Order, Universal Testing will develop, maintain, and implement a disciplinary program with a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the rules. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns. The disciplinary program will consider the company's disciplinary actions for situations discussed in Item 4 above.

6. Within 1-year from the date of this Confirmatory Order, Universal Testing will discuss with the Non-Destructive Testing Manager's Association (NDTMA) the possibility of an industry-based program to share information about radiography employees. The

concept would be for this industry-based program to assist radiography companies to determine the trustworthiness and reliability of individuals applying for employment.

7. Not later than 1-year from the date of this Confirmatory Order, Universal Testing will discuss with NDTMA the possibility of submitting an article or making a presentation to the membership. The article or presentation will address the conditions of this Confirmatory Order and the value it adds to overall safe and effective operations. Alternatively, Universal Testing will propose to make a presentation to the local Salt Lake City Chapter of the American Society of Non-destructive Testing (ASNT) on the same subject. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article or presentation will be provided to the NRC Region IV office (in advance of the submittal) for review, comment, and concurrence.
8. If Universal Testing applies for an NRC license, Universal Testing will request that the conditions of this Confirmatory Order be incorporated into its license.
9. The above provisions do not apply to any existing NRC licensee that may purchase Universal Testing, LLC. Universal Testing will promptly notify NRC Region IV if any existing NRC licensee agrees to purchase Universal Testing.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Universal Testing, LLC of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Universal Testing, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Universal Testing, LLC, 393 South Main, Clearfield, Utah 84015. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Leonard D. Wert, Acting Regional Administrator

Dated this 6th day of November, 2007