

November 9, 2007

EA-07-254

Mr. Michiel Grafwinckel  
Laboratory Operations Manager  
Stork Twin City Testing  
662 Cromwell Avenue  
St. Paul, MN 55114

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION – STORK TWIN CITY TESTING

Dear Mr. Grafwinckel:

This refers to information obtained from a representative of the Iowa Department of Health (IDH) and subsequent discussions between Brad Wells of your staff and Robert Gattone of my staff on September 14, October 25, and October 29, 2007, regarding Stork Twin City Testing's (STCT) conduct of industrial radiography at 2760 Dayton Avenue, Ames, Iowa, an area of exclusive federal jurisdiction in an Agreement State.

Title 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, areas of exclusive Federal jurisdiction within Agreement States, and in offshore waters, provided that the provisions of 10 CFR 150.20(b) have been met. Title 10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in Non-Agreement States, areas of exclusive Federal jurisdiction within Agreement States, and in offshore waters, shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office. Compliance with 10 CFR 150.20(b)(1) is important because it provides the NRC with opportunities to conduct inspections of specific licensees from an Agreement State that are granted an NRC general license to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction within Agreement States, and in offshore waters.

Based on the above, the NRC has determined that a violation of 10 CFR 150.20(b)(1) occurred when, on several occasions between October 12, 2006, and August 13, 2007, members of your staff conducted industrial radiography at a USDA facility located at 2760 Dayton Avenue, Ames, Iowa, an area of exclusive federal jurisdiction in an Agreement State, and your staff failed to file an NRC Form-241 with the NRC before engaging in that activity. The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

Robert Gattone informed Brad Wells of the apparent violation during a teleconference on September 14, 2007. Mr. Gattone subsequently discussed the information contained in this letter with Mr. Wells during a teleconference on October 29, 2007. The NRC determined that the violation occurred because a member of your staff believed that the Dayton Avenue job site (job site) was an off-campus, Iowa State University (ISU) facility and radiography could be done there by authorization of STCT's IDH license. Your staff member believed the job site was an off-campus, ISU facility, in part, because the individual: (1) thought ISU students worked there; (2) had seen cattle and buffalo there and he assumed that the job site involved veterinary activities, consistent with his understanding that ISU was a large veterinary university; and (3) knew ISU had off-campus facilities.

The NRC also determined that you implemented corrective actions to prevent a similar violation in the future that included plans to contact the IDH or the NRC Region III office whenever you are unsure if a planned job is in an area of exclusive federal jurisdiction to verify whether or not you need to file for reciprocity with the NRC. In addition, the NRC determined that, based on inspections performed by IDH inspectors, STCT has had sustained good performance conducting industrial radiography activities as authorized by the IDH license.

The violation of 10 CFR 150.20(b)(1) is normally characterized as a Severity Level III violation in accordance with Supplement VI.C.7 of the NRC Enforcement Policy. Notwithstanding, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion in this case in accordance with Section VII.B.6 of the Enforcement Policy and not cite the violation because you: (1) were not aware that you were operating within NRC jurisdiction when the violation occurred; (2) the USDA facility was located in proximity to state facilities near the ISU campus; and (3) the buildings were not clearly marked to indicate USDA versus ISU occupancy. Future violations of 10 CFR 150.20 will be considered for escalated enforcement in accordance with the NRC Enforcement Policy.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed on the docket in this letter. Therefore, you are not required to respond to this letter unless the description in this letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should clearly mark your response as a "Reply to an Exercise of Enforcement Discretion, EA-07-254" and send it to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with copies to: (1) the Regional Administrator and the Enforcement Officer, Region III; and (2) the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

M. Grafwinckel

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). The NRC's document system is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

We will gladly discuss any questions you have concerning the information contained in this letter.

Sincerely,

***/RA by Mark A. Satorius Acting for/***

James L. Caldwell  
Regional Administrator

cc: Brad Wells, RSO, 3922 Delaware Avenue, Des Moines, IA 50313  
Randy Dahlin, Iowa Department of Health

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Letter to Michiel Grafwinckel from James L. Caldwell dated November 9, 2007

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION – STORK TWIN CITY TESTING

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