

January 11, 2008

EA-07-257

Mr. Frank G. Pennisi
Regional Vice President and Radiation Safety Officer
Material Testing, Inc.
175 Quincy Court
Hopelawn, NJ 08861

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03034791/2007001)

Dear Mr. Pennisi:

This refers to an NRC inspection conducted at your temporary job site in Whitehall, Pennsylvania, as well as at your permanent sites in Hopelawn, New Jersey, and Neffs, Pennsylvania between June 19, 2007 and September 11, 2007. During the inspection, two apparent violations were identified, one of which the NRC considered for escalated enforcement action. The findings involved: (1) on two separate occasions, failures to provide any tangible barrier as an independent physical control to secure portable gauges from unauthorized removal, whenever the gauges were not under control or surveillance; and, (2) the failure to secure each shipment so that radioactive materials would not shift during normal transport conditions. The findings of the inspection were discussed with you during an exit meeting at the conclusion of the inspection on September 11, 2007. The apparent violations of NRC requirements were also documented in Inspection Report No. 03034791/2007001 that was sent to you in a letter dated November 20, 2007.

On December 18, 2007, a predecisional enforcement conference (PEC) was conducted in the Region I office with you and members of your staff, to discuss the apparent violation being considered for escalated enforcement action. During the PEC, you presented information related to the root causes of the apparent violation and your corrective actions taken and/or planned to prevent future violations. Based on the results of the inspection, as well as information provided at the PEC, the NRC has determined that a violation of NRC requirements occurred. The violation is described in the enclosed Notice of Violation (Notice), and involved two examples of failures to use two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges were not under your control and constant surveillance. In addition, a similar violation, involving your use of only one tangible barrier to secure a portable gauge, classified at Severity Level (SL) IV, was issued on August 31, 2006 (ML062480095, EA-06-202).

In assessing the significance of the current violation, the NRC considered that the gauges were left unattended without protection by any physical barriers, which could have created a potential for the loss or theft of a device containing radioactive material. Therefore, in accordance with the Enforcement Policy, the NRC has classified this violation at a SL III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a SL III violation. Since your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit is warranted for corrective action because your actions, which were described at the PEC, were considered to be prompt and comprehensive. The actions included: (1) immediately transferring unsecured portable gauges to a secure location; (2) installing additional tangible barriers to prevent unauthorized removal of the gauges when the gauges are not under direct control or surveillance of licensee staff; (3) providing instructions to authorized gauge users on the requirements of 10 CFR 30.34(i) and the guidance in NUREG-1556 Vol. 1, Rev. 1, and having the gauge users sign the documents indicating they have read and understood requirements; (4) increasing the frequency of Branch Manager field audits; and, (5) hiring a company-wide Director of Technical Operations to review audits, records of audits, and security.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice without a civil penalty for the SL III violation. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort in the future.

The second violation, involving the failure to secure a moisture density gauge containing licensed radioactive material to prevent shifting during normal transportation conditions is also described in the enclosed Notice, and is classified as a SL IV violation in accordance with the Enforcement Policy.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in this letter, our November 20, 2007 letter and Inspection Report No. 03034791/2007001, and your letter dated December 20, 2007. Therefore, no response to this letter or enclosed Notice is required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, please follow the instructions described in the enclosed Notice. If you choose to provide additional information, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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).

Mr. Frank G. Pennisi

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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 enclosures 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>.

Sincerely,

IRAI Original Signed by Marc L. Dapas

Samuel J. Collins
Regional Administrator

Docket No. 03034791
License No. 29-30465-01

cc:
State of New Jersey
Commonwealth of Pennsylvania

Mr. Frank Pennisi

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Sincerely,
/RA/ Original Signed by Marc L. Dapas
Samuel J. Collins
Regional Administrator

Docket No. 03034791
License No. 29-30465-01
cc:
State of New Jersey
Commonwealth of Pennsylvania

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*see previous concurrence page

NOTICE OF VIOLATION

Material Testing, Inc.
Hopelawn, NJ

Docket No. 03034791
License No. 29-30465-01
EA-07-257

During an NRC inspection conducted at your temporary job site in Whitehall, PA, as well as at your permanent sites in Hopelawn, NJ and Neffs, PA between June 19, 2007 and September 11, 2007, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal during two separate occasions, at the Neffs, Pennsylvania facility. Specifically: (1) on June 19, 2006, three gauges containing licensed material were stored and left unattended without any independent physical controls to secure the devices from unauthorized removal; and, (2) on June 19, 2007, one gauge was left unattended in a personal vehicle without any independent physical controls to secure the devices from unauthorized removal.

This is a Severity Level III violation (Supplement IV).

- B. 49 CFR 177.842(d) requires, in part, that packages of radioactive materials be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on August 30, 2007, the licensee failed to block and brace a moisture density gauge containing licensed material to prevent a change in position during conditions normally incident to transportation.

This is a Severity Level IV violation (Supplement V).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the letter transmitting this Notice, our November 20, 2007 letter and Inspection Report No. 03034791/2007001, and your letter dated December 20, 2007. Therefore, no response to this letter or enclosed Notice is required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-07-257," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 475 Allendale Rd., King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response, if you choose to submit one, will be made available electronically for public inspection in the NRC Public Document Room and from NRC's document management system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, the response should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publicly available without redaction. However, 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 withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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 may be required to post this Notice within two working days.

Dated this 11th day of January 2008