

January 23, 2008

EA-07-303

Mattingly Testing Services, Inc.
ATTN: Mr. Mark M. Ficek
President/RSO
12555 West Andrews Lane
Molt, MT 59057

SUBJECT: DEMAND FOR INFORMATION

Dear Mr. Ficek:

The enclosed Demand for Information (DFI) is being issued to Mattingly Testing Services, Inc., (Mattingly Testing) to obtain specific information regarding (1) the licensed material possessed under Byproduct Materials License No. 25-21479-01, and (2) the work environment within your organization concerning your employees' ability to raise safety and compliance concerns to Mattingly Testing and the NRC without fear of retaliation. As you are aware, on November 7, 2007, the NRC began an inspection and investigation into your licensed activities. The information obtained so far has raised concerns that warrant issuance of this DFI while the inspection and investigation activities continue.

The NRC is requiring you to provide information so we can evaluate and determine the appropriateness of Mattingly Testing's licensed material program at temporary job sites.

The NRC is also requiring you to provide information so we can evaluate the depth and completeness of Mattingly Testing's work environment and its determination that it maintains an environment where employees can raise safety concerns without fear of retaliation. Specifically, the NRC is requesting additional details relative to the establishment, implementation and maintenance of a program designed to provide and support such a work environment.

Note that failure to comply with the provisions of this Demand for Information may result in further enforcement action.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, the enclosed Demand for Information, with the exception of the enclosed Appendix, 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). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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). You should protect all security-related information from unauthorized disclosure as required.

The NRC will also include this letter and its enclosure, with the exception of the enclosed Appendix, on its website at www.nrc.gov; select **Public Meeting & Involvement, Enforcement,** and then **Significant Enforcement Actions.**

If you have any questions regarding the DFI, please contact Vivian Campbell at (817) 860-8287 or Leonard Wert at (817) 860-8106. Thank you for your cooperation.

Sincerely,

/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Docket No.: 030-20836
License No.: 25-21479-01

Enclosure: As Stated

cc (w/enclosure):
Montana Radiation Control Program Director

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For **Cover Letter** and **ORDER**

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RC:TL/ACES	DRA	OGC	D:OE	
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OFFICIAL RECORD COPY

Mattingly Testing Services, Inc.
EA-07-303

Docket No.: 030-20836
License No.: 25-21479-01

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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Mattingly Testing Services, Inc.
Molt, Montana

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Docket No. 030-20836
License No. 25-21479-01
EA-07-303

DEMAND FOR INFORMATION

I

Mattingly Testing Services, Inc., (Mattingly Testing) is the holder of Materials License No. 25-21479-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 and 10 CFR Part 34. The license, initially issued on December 2, 1983, authorizes Mattingly Testing to possess radioactive sealed sources for use in industrial radiography in Molt, Montana, and at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States. The license was last renewed in its entirety on February 22, 2006, and is due to expire on February 28, 2016.

II

On November 7, 2007, during an inspection of Mattingly Testing's radiographic operations at a temporary job site, several apparent violations of NRC regulations were identified. In addition, during a follow-up inspection and investigation during the week of November 12, 2007, the NRC inspector and investigator were informed that senior management of Mattingly Testing

discouraged employees from speaking with NRC inspectors and investigators. The NRC is concerned that an environment exists within Mattingly Testing's workplace that could inhibit employees from raising safety concerns to the NRC. The NRC inspections and investigation, which are still ongoing, have indicated that:

1. Mattingly Testing's control of licensed material at temporary job sites is not in compliance with NRC requirements;
2. Mattingly Testing's senior management has apparently caused employees to engage in activities that are in violation of NRC regulations and Orders; and
3. Mattingly Testing's senior management has discouraged employees from raising safety concerns both to their management and to the NRC.

This information demonstrates a lack of management control and supervision over licensed activities, raises questions as to whether Mattingly Testing will provide complete and accurate information to the NRC in compliance with 10 CFR 30.9, and whether Mattingly Testing is complying with the provisions with 10 CFR 19.15(b). Therefore, further information is needed to determine whether the Commission can have reasonable assurance that Mattingly Testing will comply with the Commission's requirements, ensure a healthy work environment, provide complete and accurate information to the Commission and otherwise conduct its activities in accordance with the Commission's requirements.

III

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, and 10 CFR 30.9, and 10 CFR 30.32(b), in order for the Commission to determine whether your license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, Mattingly Testing is required to submit the following information in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, within 20 days of the date of this Demand for Information. If security-related information is necessary to provide an acceptable response, you must mark your entire response "Proprietary Information in accordance with 10 CFR 2.390(d)(1)" and follow the instructions for withholding in 10 CFR 2.390(b)(1). In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response.

1. Provide the information requested in the non-publicly available Appendix to this Demand for Information.
2. Describe the actions it has taken and plans to take to provide reasonable assurance that its organization establishes and maintains an appropriate safety conscious work environment¹ where employees are free to raise safety concerns to the NRC and to Mattingly Testing's senior management without fear of retaliation. In addition, describe the actions it has taken and plans to

¹ NRC defines Safety Conscious Work Environment as a work environment in which employees are encouraged to raise safety concerns, are free to raise concerns both to their own management and to the NRC without fear of retaliation, where concerns are promptly reviewed, given the proper priority, and appropriately resolved and timely feedback is provided. The NRC issued a Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" on May 14, 1996 [61 FR 24336] and additional guidelines in Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety conscious work Environment" on August 25, 2005.

Mattingly Testing Services, Inc.

- 4 -

take to ensure its employees understand the provisions of 10 CFR 19.15, 10 CFR 30.7, and 10 CFR 30.9.

Copies of this information shall also be sent to the Assistant General Counsel for Materials Litigation and Enforcement at the same address above, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-4005.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 23rd day of January, 2008