July 21, 2008

EA-08-094

John Scott
Construction Materials Testing Services Inc.
5 Cromwell St.
Wheeling, West Virginia 26003

SUBJECT: NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION TO NOT PROPOSE IMPOSITION OF A CIVIL PENALTY, AND TERMINATION OF LICENSE (Inspection Report No. 2008001 and Investigation Report Nos. 1-2008-003 & 1-2008-042F)

Dear Mr. Scott:

This letter refers to an NRC inspection that was initiated in September 2007 at the former Construction Materials Testing, Inc. (CMTS) facility, located at 1185 Armour St., Washington, Pennsylvania. The inspection was conducted to determine the status of CMTS, after the NRC issued an Order on August 21, 2007, revoking the license for failure to pay NRC fees. Since the NRC was advised by the current tenant that the CMTS had vacated the location, the Order was considered undeliverable, and the NRC Office of Investigations (OI) initiated an investigation on October 3, 2007 to locate the licensee and the whereabouts of the three portable gauges CMTS was licensed to possess.

Based on its investigation, OI determined that the owner of CMTS: (1) moved to a new location in Wheeling, West Virginia; (2) stored one gauge at the Wheeling, WV location; and, (3) stored the remaining two gauges at the location authorized by license in Washington, PA, even though the facility was, at the time, being leased by another company. After discussions with the NRC, CMTS removed the two portable gauges located in Washington, Pennsylvania and relocated them to temporary storage at the Wheeling, WV location.

On April 16, 2008, an NRC inspection was conducted at the Wheeling, West Virginia location. The NRC inspector confirmed that the three gauges were properly secured, and that CMTS was in the process of obtaining a leak testing kit and preparing to safely transfer the gauges. During May 2008, CMTS performed the leak test, submitted the results, and received confirmation that no leakage had occurred. CMTS also safely transferred the three gauges to an approved vendor. This additional information was reviewed on May 8, 2008, as part of the NRC inspection.

Based on the information developed during the inspection and the investigation, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report issued on July 14, 2008. The violations occurred in February 2007 and involve: (1) storage of licensed material at a location not authorized by the license, and (2) the failure to test the sealed source in a portable gauge for leakage within the required interval prior to removal from storage for use.

Regarding the storage of licensed material at an unauthorized location, the NRC determined, based on the OI investigation, that the CMTS owner had deliberately stored one of the portable gauges in Wheeling, West Virginia, an unauthorized location, knowing that the authorized storage location was in Washington, Pennsylvania. The NRC also considered that had the location of the gauges not been determined, there was a potential to have lost accountability of the three portable gauges, which could have led to radioactive material in the public domain. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of $ 3,250 is considered for a SL III violation involving portable gauge licensees.

Since the violation was willful, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is not warranted because the NRC identified the violation. Credit is warranted for corrective action, however, because your actions included completing the source leak testing, as well as safely transferring all of CMTS' radioactive material to an approved vendor. Since no credit was given for identification, normally a base civil penalty would be warranted for a willful SL III violation. However, the NRC also considered that CMTS provided appropriate security for the three portable gauges at both locations, and that you safely transferred the gauges in a timely manner, given your limited financial capacity. In addition, the NRC considered that the CMTS license is being terminated under the terms of the Order Revoking License Following Immediately Effective 30-day Suspension (Order), dated March 14, 2008. Therefore, in accordance with Section VII B.6 of the Enforcement Policy, having considered the circumstances and merits of this case, including the termination of your license, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion in this matter to not propose a civil penalty.

Please be aware, should you seek in the future to obtain an NRC license or to be listed on an NRC license as a radiation safety officer, these matters, including payment of all debts to the NRC, may be taken into consideration in our evaluation.

No response to this letter or the enclosed Notice is required, due to the termination of your license. However, if the description in this letter does not accurately reflect your corrective actions or your position, or if you choose to respond, you should follow the instructions specified herein.

In accordance with the NRC Order and satisfaction of the requirements of 10 CFR 30.36, an amendment to your license is attached that terminates License No. 37-30515-01.

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. If you choose to respond, 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). The NRC also includes significant enforcement actions on its Web site at (http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/).

Sincerely,

***/RA/** Original Signed by Marc L Dapas for*

Samuel J. Collins
Regional Administrator

Docket No. 030-34997
License No. 37-30515-01

Enclosures: Notice of Violation
Amendment No. 04 Terminating License No. 37-30515-01

cc w/encls:
State of Pennsylvania
State of West Virginia

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). The NRC also includes significant enforcement actions on its Web site at (http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/).

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Samuel J. Collins
Regional Administrator

Docket No. 030-34997
License No. 37-30515-01

Enclosures: Notice of Violation
Amendment No. 04 Terminating License No. 37-30515-01

cc w/encls:
State of Pennsylvania
State of West Virginia

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P Holahan, NSIR
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T Bloomer, OEDO
S Williams, OEDO
Enforcement Coordinators
RII, RIII, RIV
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NOTICE OF VIOLATION

Construction Materials Testing Services Inc.
Washington, Pennsylvania

Docket No. 03034997
License No. 37-30515-01
EA-08-094

During an NRC inspection conducted between September 2007 and May 2008, for which an exit meeting was conducted on July 3, 2008, as well as an NRC Office of Investigations (OI) investigation and an assist to the staff, completed on January 8 and April 24, 2008, respectively, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. Condition No. 10 of License No. 37-30515-01 states that licensed material may be used or stored at the licensee's facilities located at 1185 Armour Street, Washington, Pennsylvania, and may be used at temporary job sites of the licensee anywhere in the United States where the U.S. NRC maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States.

Contrary to the above, from approximately February 2007 through November 27, 2007, the licensee failed to store all of its licensed material at the licensee's facilities located in Washington, PA. Specifically, the licensee stored one of its portable gauges containing licensed material at a location in Wheeling, West Virginia, and the long-term storage at this location was not associated with a temporary job site.

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

B. Condition No. 14 C. of License No. 37-30515-01 states, in part, that when sealed sources are removed from storage for use and have not been tested within the required leak test interval, they shall be tested before use.

Contrary to the above, in February 2007, the licensee failed to test a sealed source for leakage and the source had not been leak tested since 2005, which is longer than the required leak test interval of one year, prior to its use.

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

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 Inspection Report No. 03034997/2008001 and in the letter transmitting this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description in this letter, or the inspection report does not accurately reflect your corrective actions or your position. Also, you may you choose to provide additional information in response to this Notice. Your responses should be clearly marked as a, "Reply to a Notice of Violation, EA-08-094," and sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Your response, if you choose to provide one, 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. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 21st day of July 2008.