

March 04, 2009
EN 09-013

OFFICE OF ENFORCEMENT
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: Mattingly Testing Services, Inc. (EA-08-271)
Molt, Montana
Docket No: 030-20836

Individual: Mr. Mark M. Ficek (IA-08-055)

Subject: TWO CONFIRMATORY ORDERS (EFFECTIVE IMMEDIATELY)

This is to inform the Commission that a Confirmatory Order modifying the license and confirming commitments reached as part of an alternative dispute resolution (ADR) mediation settlement agreement will be issued on or about March 06, 2009, to Mattingly Testing Services, Inc. regarding its radiography program. Additionally, as a result of the same ADR session, a Confirmatory Order will be issued, on or about the same date, that will prohibit Mr. Mark M. Ficek from NRC licensed activities for a period of two years.

These enforcement actions were pursued based on a total of nine apparent violations for the licensee: (1) failure to wear required dosimetry during radiographic operations by a radiographer's assistant; (2) failure to secure a radiographic exposure device containing radioactive material with a minimum of two independent physical controls; (3) failure to notify NRC within 24 hours after discovery of an event; (4) failure to use pocket dosimetry that is calibrated; (5) failure to have a required functional alarm system; (6) failure to provide complete and accurate information to the Commission; (7) failure to provide supervision of an assistant radiographer by a radiographer during use of radiographic equipment; (8) failure to remove damaged equipment from service; and (9) failure to assure that an individual acting as an assistant radiographer had completed a practical examination on the use of radiographic equipment. Further, the ADR agreement acknowledges that the licensee denies any willfulness associated with the violations and agrees to the occurrence of the first five violations listed above. The ADR agreement also acknowledges multiple corrective actions already taken by the licensee, and provides for additional corrective actions including hiring an independent consultant(s) to evaluate safety and compliance and provide training.

Enforcement was pursued against Mr. Ficek, the Mattingly Radiation Safety Officer at the time of the violations, as a result of his apparent deliberate acts associated with three of the nine violations identified for the licensee. Additional apparent deliberate actions by Mr. Ficek occurred when he directed a radiographer to stop retraction of a radiography source in to the shielded position (the radiographer refused to follow the directions). Mr. Ficek and the NRC have agreed to disagree on the final determination of his actions in violation of 10 CFR 30.10, Deliberate Misconduct.

~~PRELIMINARY INFORMATION — NOT FOR PUBLIC DISCLOSURE UNTIL
VERIFICATION THAT LICENSEE HAS RECEIVED ACTION~~

Mattingly Testing Services, Inc., and Mr. Mark Ficek will be informed of issuance of the Order on or about the following dates:

Telephone Notification of Licensee	March 06, 2009
Mailing of Notice and Order	March 06, 2009

The State of Montana will be notified on or about the same date.

CONTACTS: S. Woods, OE, (301) 415-2740 N. Hilton, OE, (301) 415-3055

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