



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 E. Lamar Blvd., SUITE 400
ARLINGTON, TEXAS 76011-4005

July 17, 2009

EA-09-149

Decisive Testing, Inc.
ATTN: Michael May
Radiation Safety Officer
4735 Myrtle Ave.
San Diego, California 92105

SUBJECT: NRC INSPECTION REPORT 150-00004/2009-002 AND NOTICE OF VIOLATION
AND INVESTIGATION CASE 4-2008-069

Dear Mr. May:

This letter refers to NRC's inspection and investigation of Decisive Testing, Inc. (Decisive Testing) regarding licensed activities conducted under the provisions of a general license issued pursuant to 10 CFR 150.20. The inspection was initiated by the NRC staff on September 16, 2008, at your offices in San Diego, California. The purpose of the inspection was to examine work activities conducted in areas of exclusive Federal jurisdiction utilizing radiographers who were not certified through a radiographer certification program by a certifying entity as required by 10 CFR 34.43 and to review documentation of training records maintained for radiographers and radiographers' assistants as required by 10 CFR 34.79. The NRC Office of Investigation initiated an investigation concurrent with the inspection to assess whether Decisive Testing willfully failed to have radiographers certified prior to conducting radiographic operations in areas of exclusive Federal jurisdiction. The preliminary inspection and investigation findings were discussed with you and your staff at the conclusion of the onsite portion of the inspection. The inspection continued as an in-office inspection to evaluate the certification of radiographers and the training for radiographers and radiographers' assistants who worked in NRC jurisdiction by reviewing the transcript proceedings taken in the offices of Decisive Testing on September 16, 2008, and reviewing the documentation of the training records provided during the onsite inspection. A final telephonic exit meeting was held between members of my staff and you on June 22, 2009. The enclosed inspection report presents the results of this inspection and investigation.

Based on the information developed during the inspection and investigation, the NRC determined that two violations of NRC requirements occurred. As discussed with you during the exit meeting on June 22, 2009, the violations involved: (1) the failure to use a certified radiographer during radiographic operations in areas of exclusive Federal jurisdiction; and (2) the failure to document training and the job performance observations of radiographers and radiographers' assistants. These two violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject

inspection report. In addition, the investigation did not substantiate that Decisive Testing willfully failed to certify radiographers prior to conducting radiographic operations in NRC jurisdiction.

The failure to have a certified radiographer onsite during radiographic operations is considered safety significant, as certified radiographers have undergone extensive testing to ensure that they are well trained and knowledgeable in radiation safety and in conducting radiographic operations. The failure to utilize a certified radiographer could lead to unsafe working conditions. Typically, this violation is categorized as a Severity Level III violation with a civil penalty. However, since the radiographer who conducted radiographic operations in areas of exclusive Federal jurisdiction was technically qualified to perform licensed activities and there was not a perceived risk to public health and safety, the violation is categorized as a Severity Level IV violation in accordance with the NRC Enforcement Policy. Additionally, the failure to document or maintain training records is categorized as a Severity Level IV violation in accordance with the NRC Enforcement Policy.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is adequately addressed on the docket in the initial NRC Form 241 dated March 6, 2009, and NRC Inspection Report 150-00004/09-002. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, should you decide 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/pdr.html> or www.nrc.gov/reading-rm/adams.html. To the extent possible, any response provided by Decisive Testing 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 www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Should you have any questions concerning this matter, please contact Rachel Browder at (817) 276-6552 or the undersigned at (817) 860-8197.

Sincerely,

/RA/

Jack E. Whitten, Chief
Nuclear Materials Safety Branch B

Docket: 150-00004

License: General License Pursuant to
10 CFR 150.20 (CA License 1836-37)

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 150-00004/09-002
3. Excerpt from NRC Information Notice 96-28

cc w/Enclosures 1 and 2:
California Radiation Control Program Director

Hard Copy Distribution w/enclosures:
RIV Materials Docket File (5th Floor)

bcc w/Enclosures 1 and 2 (via e-mail):

A. Howell, D:DNMS

C. Cain, DD:DNMS

J. Whitten, C:DNMS/NMSB-B

V. Campbell, C:DNMS/NMSB-A

A. Gaines, NMSB-A

B. Spitzberg, C:DNMS/RSFS

C. Maier, ACES

M. Haire, ACES

R. Browder, NMSB-B

M. Herrera, Fee Coordinator, DRMA/FRMB

S:\DNMS\~ESCALATED ENFORCEMENT\ACTIVE CASES\Decisive Testing – Reciprocity\
Decisive Testing IR 150-00004-09-02 -- EA-09-149.doc ML091980267

ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: RSB
		<input checked="" type="checkbox"/> Publicly Available	<input checked="" type="checkbox"/> Non-sensitive	
KEYWORD:				
RIV:DNMS:NMSB-B	C:NMSB-B			
RSBrowder;dlf	JEWhitten			
/RA/	/RA/			
7/15/09	7/17/09			

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Decisive Testing, Inc.
San Diego, California

Docket 150-00004
General License 150.20
EA-09-149

During an NRC inspection and investigation, which concluded on June 22, 2009, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 150.20(b) provides, in part, that the general license provided in this section is subject to all the provisions of the Act, now or hereafter, and all applicable rules, regulations, and orders of the Commission, including the provisions of Subparts C through H of Part 34.

10 CFR 34.43(a)(1) requires, in part, that a licensee may not permit any individual to act as a radiographer until the individual has received certification through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of 10 CFR Part 34.

Contrary to the above, on various dates between February 15 and July 17, 2008, the licensee permitted an individual to act as a radiographer without the individual having received certification through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of 10 CFR Part 34. Specifically, the individual acting as the radiographer of record, while performing industrial radiography at the Marine Corps Air Station Miramar, San Diego, California, was not certified as a radiographer.

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

- B. 10 CFR 150.20(b) provides, in part, that the general license provided in this section is subject to all the provisions of the Act, now or hereafter, and all applicable rules, regulations, and orders of the Commission, including the provisions of Subparts C through H of Part 34.

10 CFR 34.43(e) and (f) require the licensee to maintain records of training of radiographers and radiographers' assistants, including certification documents, written and practical examinations, refresher training, and inspections of job performance, for 3 years after the date the record is made in accordance with 10 CFR 34.79.

Contrary to the above, between April 2006 and July 2008, the licensee did not maintain complete records of training for radiographers and radiographers' assistants, including copies of the practical exams and inspections of job performance during the required period.

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

The NRC has concluded that information regarding the reason for these violations, the corrective actions taken and planned to be taken to correct the violations and prevent

recurrence, and the date when full compliance was achieved, is adequately addressed on the docket in correspondence dated March 6 and July 14, 2009, and NRC Inspection Report 150-00004/09-002. 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" and include "EA 09-149" 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 IV, 612 E. Lamar Blvd., Suite 400, Arlington, Texas 76011-4125, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response 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 www.nrc.gov/reading-rm/pdr.html or 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 17th day of July 2009

U.S. Nuclear Regulatory Commission
Region IV

Docket: 150-00004

License: General License Pursuant to 10 CFR 150.20

Report: 150-00004/09-002

EA: 09-149

Licensee: Decisive Testing, Inc.

Location: San Diego, California

Dates: September 16, 2008, through June 22, 2009

Inspector: Rachel S. Browder, Health Physicist
Nuclear Materials Safety Branch B

Investigator: John H. Oglesby, Jr., Senior Special Agent
Office of Investigations, Field Office, Region IV

Approved By: Jack E. Whitten, Chief
Nuclear Materials Safety Branch B

Attachment: Supplemental Inspection Information

EXECUTIVE SUMMARY

Decisive Testing, Inc.
NRC Inspection Report 150-00004/09-002

This was an announced inspection and investigation at the offices of Decisive Testing, Inc., (Decisive Testing) located in San Diego, California. The scope of the inspection was to examine work activities conducted by Decisive Testing in areas of exclusive Federal jurisdiction utilizing radiographers who had not obtained certification through a certifying entity as required by 10 CFR 34.43 and the failure of the general licensee to document training records for radiographers and radiographers' assistants as required by 10 CFR 34.79. The NRC Office of Investigation initiated an investigation concurrent with the inspection to assess whether Decisive Testing had willfully failed to have radiographers certified prior to conducting radiographic operations in areas of exclusive Federal jurisdiction. Based on the evidence developed during the investigation, it was determined that Decisive Testing did not willfully fail to certify radiographers prior to conducting radiographic operations in NRC jurisdiction. The inspection continued as an in-office inspection to evaluate the certification of radiographers and the training for radiographers and radiographers' assistants that worked in NRC jurisdiction by reviewing the transcript proceedings of the interviews taken on September 16, 2008, in the offices of Decisive Testing and reviewing the documentation of the training records provided during the onsite inspection. This report describes the findings of the inspection and investigation.

Program Overview

- Decisive Testing is a nondestructive testing company with its corporate offices located in San Diego, California. Decisive Testing was authorized to conduct industrial radiography operations under its State of California radioactive materials License 1836-37 and was authorized to conduct the same activities in areas of exclusive Federal jurisdiction and in non-Agreement States under a general license issued in accordance with the provisions of 10 CFR 150.20. (Section 1)

Inspection Findings

- The licensee failed to ensure that a radiographer conducting radiographic operations in NRC jurisdiction had been certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of 10 CFR Part 34. (Section 2)
- The licensee failed to ensure that training records were maintained for radiographers and radiographers' assistants in accordance with 10 CFR 34.79. (Section 2)

Corrective Actions

- The licensee provided documentation to confirm the radiographer conducting radiographic operations in NRC jurisdiction was certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of 10 CFR Part 34. (Section 3)

- The licensee confirmed that licensee personnel had received annual refresher training and on-the-job performance observations as required by 10 CFR 34.43 and the training records were documented as required by 10 CFR 34.79. (Section 3)

Report Details

1 Program Overview (87121)

1.1 Inspection Scope

The inspector reviewed Decisive Testing, Inc.'s (Decisive Testing) historical NRC Form 241 applications and clarifications, supporting documents, and other training and dosimetry records maintained by the licensee. Collectively, these documents described the licensee's industrial radiography activities in areas of exclusive Federal jurisdiction and its radiation safety program. Interviews with licensee personnel were also conducted as part of the investigation.

1.2 Observations and Findings

Decisive Testing is a nondestructive testing company with its corporate offices located in San Diego, California. Decisive Testing is authorized to conduct industrial radiographic operations under its State of California radioactive materials License 1836-37 and is authorized to conduct radiographic operations in NRC jurisdiction under the authority of a general license issued pursuant to the provisions of 10 CFR 150.20. A review of reciprocity records indicated that Decisive Testing had filed reciprocity with the NRC for approximately the last 11 years. The primary locations of work activities in areas of exclusive Federal jurisdiction during calendar year 2008 were at the Marine Corps Air Station Miramar in San Diego, California, and the Ballast Point Fuel Farm in California.

2 Inspection Findings (87121)

2.1 Inspection Scope

The inspection focused on a review of the training records of the radiographer and radiographers' assistant who worked in areas of exclusive Federal jurisdiction during calendar year 2008 and examined work activities conducted in areas of exclusive Federal jurisdiction utilizing radiographers who had not obtained certification through a certifying entity as required by 10 CFR 34.43. The investigation evaluated whether the general licensee willfully failed to have radiographers certified prior to conducting radiographic operations in areas of exclusive Federal jurisdiction.

2.2 Observations and Findings

The State of California performed an inspection at the offices of Decisive Testing in San Diego, identified several violations, and subsequently placed restrictions on the licensee's radioactive materials license on July 25, 2008. The licensee contacted the NRC on July 30, 2008, and informed the NRC staff about the restrictions imposed by the State of California on its radioactive materials License 1836-37. During the telephone call, the NRC staff informed the licensee that they were also prohibited from conducting licensed activities under their 10 CFR 150.20 general license as a result of the restrictions placed on their State of California license. In a letter dated August 11, 2008, the State of California authorized Decisive Testing to resume radiographic activities with certain restrictions on their license. These restrictions limited Decisive Testing from

naming its own radiographers and radiographers' assistants and required that the names of radiographers and radiographers' assistants be approved only by the State of California through license conditions. The NRC staff issued a letter dated August 14, 2008, to the licensee stating that the licensee could resume activities in areas of exclusive Federal jurisdiction and that the licensee must provide the names of the radiographers and radiographers' assistants who would be conducting radiographic operations in NRC jurisdiction. The NRC would subsequently confirm that the authorized names provided by Decisive Testing were the same names as authorized by the State of California in its letter to the licensee dated August 11, 2008. On August 19, 2008, the NRC requested a copy of the radiographer's certification card who intended to work in areas of exclusive Federal jurisdiction. During the telephone call with Decisive Testing on August 19, 2008, it was determined by the NRC staff that the certification received by the radiographer did not meet the requirements of 10 CFR 34.43(a)(1). The licensee understood that, since the radiographer did not meet the certification requirements, Decisive Testing could not work in areas of exclusive Federal jurisdiction until the proper certification had been obtained by the radiographers and the NRC had been notified.

An inspection and investigation was conducted in the offices of Decisive Testing on September 16, 2008. During interviews, the Radiation Safety Officer (RSO) stated that he believed that Decisive Testing was in compliance with 10 CFR Part 34 regulations, as he understood them. The RSO stated that Decisive Testing radiographers had received the classroom training, completed the 2 months of on-the-job training required by 10 CFR 34.43(a)(1), and were certified through a state approved radiographer certification program by a state approved certifying entity. The RSO further stated that, since Decisive Testing had used testing agencies approved by the State of California, he had concluded that the state approved agencies met the requirements in Parts II and III of Appendix A to 10 CFR Part 34; therefore, Decisive Testing also met the NRC's certification program requirement. Based on the RSO's conversation with the NRC inspector and investigator during the onsite inspection on September 16, 2008, the RSO affirmed that he now understood why Decisive Testing had not satisfied the radiographer certification requirements specified in 10 CFR 34.43(a)(1).

The failure of the licensee to ensure that a radiographer conducting industrial radiographic operations in NRC jurisdiction had been certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of 10 CFR Part 34 was identified as a violation of 10 CFR 34.43(a)(1). (150-00004/09-01)

The inspection continued as an in-office inspection to evaluate Decisive Testing's training program by reviewing the transcript proceedings taken during the September 16, 2008, visit by NRC staff to the offices of Decisive Testing and by reviewing the documentation of the training records provided during the onsite inspection. A review of the training records indicated that the training required by 10 CFR 34.43 was not completely documented as required by 10 CFR 34.79(a), which specifies, in part, that the records of training must be maintained for review by the NRC. For example, the training records for the radiographer's assistant confirmed that training had been provided as specified in the regulations under 10 CFR 34.43(c), including a 25-question test; however, the practical exam was not included in the training records. The RSO

confirmed that the practical exam had been administered; however, there was no documentation of the practical exam in Decisive Testing's training records. In addition, the observations made by the RSO of the on-the-job performance of the radiographer and radiographer's assistant, who conducted activities in areas of exclusive Federal jurisdiction, during an actual industrial radiographic operation at least every 6 months as required by 10 CFR 34.43(e) was not properly documented.

The failure of the licensee to maintain complete records of training for radiographers and radiographers' assistants, including copies of the practical exams and inspections of on-the-job performance as required was identified as a violation of 10 CFR 34.79(a) and (b). (150-00004/09-02)

2.3 Conclusions

The inspection identified two violations of NRC requirements, which involved: (1) a failure to have a certified radiographer onsite during radiographic operations; and (2) a failure to maintain complete records of training for radiographers and radiographers' assistants, including copies of the practical exams and inspections of on-the-job performance.

3 **Corrective Actions (87121)**

As a result of the telephone conversation between the NRC and the licensee on August 19, 2008, the licensee agreed that the radiographers did not meet the certification requirements in accordance with 10 CFR 34.43(a)(1). The licensee had already ceased licensed activities in areas of exclusive Federal jurisdiction and the licensee's RSO agreed not to conduct radiographic operations in NRC jurisdiction until at least one radiographer onsite was certified in accordance with 10 CFR 34.43(a)(1). The licensee submitted an initial NRC Form 241 dated March 6, 2009, for activities in areas of exclusive Federal jurisdiction during calendar year 2009 and provided documentation for the certification of radiographers working in NRC jurisdiction.

The licensee confirmed that Decisive Testing personnel had received annual refresher training and on-the-job performance observations were performed as required by 10 CFR 34.43. The training and observation activities were documented as required by 10 CFR 34.79(a) and (b).

4 **Exit Meeting Summary**

The preliminary site exit briefing with the RSO was conducted on September 16, 2008. A final telephonic exit briefing was conducted with the RSO on June 22, 2009, to review the inspection scope, findings, and conclusions described in this inspection report. The licensee representative acknowledged the inspector's findings. The licensee did not identify as proprietary any information provided to, or reviewed by, the inspector.

SUPPLEMENTAL INSPECTION INFORMATION

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Michael May, Radiation Safety Officer
Brian Runyon, Assistant Radiation Safety Officer
Mike Ellis, Radiographer
Rudolfo Zacatelco, Radiographer's Assistant

INSPECTION PROCEDURES USED

87121 Radiography Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

150-00004/09-01	VIO	Failure to have a certified radiographer onsite during all radiographic operations was identified as a violation of 10 CFR 34.43(a)(1).
150-00004/09-02	VIO	Failure to maintain training records as required by 10 CFR 34.79.

Closed

150-00004/09-01	VIO	Failure to have a certified radiographer onsite during all radiographic operations was identified as a violation of 10 CFR 34.43(a)(1).
150-00004/09-02	VIO	Failure to maintain training records as required by 10 CFR 34.79.

LIST OF ACRONYMS USED

CFR	Code of Federal Regulations
NRC	Nuclear Regulatory Commission
RSO	Radiation Safety Officer
VIO	Violation