

July 1, 2010

EA-10-113

Mr. Jay Miller, Vice President  
Chicago Testing Laboratory, Inc.  
30W114 Butterfield Road  
Warrenville, IL 60555

SUBJECT: NRC INSPECTION REPORT NO. 150-00012/2010-001(DNMS) –  
CHICAGO TESTING LABORATORY, INC.

Dear Mr. Miller:

This refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on May 24, 2010, with continued NRC in-office review through June 7, 2010, of Chicago Testing Laboratory, Inc. located in Thornton, Illinois. The continued NRC in-office review was related to information associated with reciprocity within NRC jurisdiction. A telephonic exit meeting was conducted between yourself and Steven Richter of your staff and Michael LaFranzo and Andrew Bramnik of my staff on June 7, 2010.

This inspection was an examination of activities associated with reciprocity for the calendar years of 2006, 2007, 2008 and 2009 as they relate to safety and compliance with the Commission's rules and regulations. Within these areas, the inspection consisted of selected examination of representative records and interviews with personnel.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at (<http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>). The apparent violation consists of possession and use of devices containing byproduct radioactive material at a storage facility in Indianapolis, Indiana, and at temporary job sites throughout Indiana, a non-Agreement State, without authorization in either a specific or general NRC license. The circumstances surrounding the apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with your staff at the inspection exit meeting on June 7, 2010.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed on the docket in this letter and the enclosed report. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position. However, before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter; or (2) request a predecisional enforcement conference (PEC). If a PEC is held, it will be open for public observation. The NRC will also issue a press release to announce the conference. Please contact Tamara Bloomer at 630-829-9627 within 7 days of the date of this letter to notify the NRC of your intended response.

Since your facility has not been the subject of escalated enforcement actions within the last two years, and based on our understanding of your corrective actions, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy.

If you choose to provide a written response, it should be clearly marked as a "Response to an Apparent Violation in Inspection Report No. 150-00012/2010-001(DNMS); EA-10-113" and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. You can find the information notice on the NRC website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website 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.

Sincerely,

/RA/

Steven A. Reynolds, Director  
Division of Nuclear Materials Safety

Docket No. 150-00012  
Illinois License No. IL-02065-01

Enclosure:  
Inspection Report

cc (w/encls): Steven Richter, RSO  
State of Illinois  
State of Indiana

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Sincerely,

/RA/

Steven A. Reynolds, Director  
Division of Nuclear Materials Safety

Docket No. 150-00012  
Illinois License No. IL-02065-01

Enclosure:  
Inspection Report

cc (w/encl): Steven Richter, RSO  
State of Illinois  
State of Indiana

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DATE	07/1/10						

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Letter to Jay Miller from Steven A. Reynolds dated July 1, 2010

SUBJECT: NRC INSPECTION REPORT NO. 150-00012/2010-001(DNMS) –  
CHICAGO TESTING LABORATORY, INC.

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U.S. NUCLEAR REGULATORY COMMISSION

REGION III

Docket No.	150-00012
License No.	Illinois License No. IL-02065-01
Report:	150-00012/2010-001(DNMS)
Licensee:	Chicago Testing Laboratory, Inc. Thornton, Illinois
Locations of work:	One permanent storage facility in Indianapolis, Indiana, as well as temporary job sites throughout Indiana
Inspection Dates:	May 24 through June 7, 2010
Exit Meeting:	June 7, 2010
Inspectors:	Andrew M. Bramnik, Health Physicist Michael M. LaFranzo, Health Physicist
Approved by:	Tamara E. Bloomer, Chief Materials Inspection Branch

Enclosure

## **EXECUTIVE SUMMARY**

**Chicago Testing Laboratory, Inc.  
Thornton, Illinois  
NRC Inspection Report 150-00012/2010-001(DNMS)**

During an initial U.S. Nuclear Regulatory Commission (NRC) inspection of an NRC licensee within the State of Indiana, inspectors identified that Chicago Testing Laboratory, Inc. (CTL) possessed and/or used radioactive material within NRC jurisdiction for certain periods of time in calendar years 2006, 2007, 2008 and 2009, and did not file for reciprocity in accordance with Title 10 Code of Federal Regulations (CFR) Part 150.20 nor had a specific NRC license to perform licensed activities within NRC jurisdiction. On May 24, 2010, the NRC initiated an inspection to determine the circumstances surrounding the use of byproduct material within NRC jurisdiction by CTL.

During the inspection, the inspectors identified that CTL, a licensee of the State of Illinois, had possessed and used devices containing sealed sources of byproduct material in Indiana, a non-Agreement State, under their Illinois license on multiple occasions between July 6, 2006, and August 30, 2009.

The inspectors identified one apparent violation of 10 CFR 30.3(a), involving CTL's failure to obtain either a specific or general NRC license prior to conducting licensed activities in a non-Agreement State where the NRC maintains jurisdiction. Specifically, in 2006, 2007, 2008, and 2009, CTL possessed and used byproduct material in Indiana, a non-Agreement State, without filing NRC Form 241 or paying the appropriate fee as required by 10 CFR 150.20(b)(1), and in 2007, 2008, and prior to August 31, 2009, CTL did not restrict the possession and use of byproduct material in Indiana to 180 days or less in any calendar year as required by 10 CFR 150.20(b)(4) or obtain a specific NRC license pursuant to 10 CFR 30.3(a).

The inspectors determined that the root cause for the apparent violation was that CTL was unaware of the requirements of 10 CFR 30.3 and 10 CFR 150.20, and had believed that their State of Illinois license authorized them for "temporary assignments" up to 180 days each with the portable gauges. As corrective action, CTL retroactively submitted NRC Form 241 for calendar years 2006, 2007, 2008, and 2009, paying a total of \$7,000 in reciprocity fees. As further corrective action, CTL will use licensed material under an NRC license through a sister company when performing licensed activities in areas where the NRC maintains jurisdiction.

## **Report Details**

### **1 Program Scope and Inspection History**

Chicago Testing Laboratory, Inc. (CTL) is a licensee of the State of Illinois authorized under Illinois License No. IL-02065- 01 to possess and use portable moisture/density gauges at the company's offices in Thornton, McHenry, and Elk Grove Village, Illinois, as well as temporary job sites throughout Illinois. The company has not been inspected by the U.S. Nuclear Regulatory Commission (NRC) before, and therefore has no enforcement history within NRC jurisdiction.

### **2 Reciprocity**

#### **2.1 Inspection Scope**

The inspectors reviewed selected documents and performed interviews of CTL personnel concerning the possession and/or use of radioactive material within Indiana, a non-Agreement State, between July 2006 and August 2009.

#### **2.2 Observations and Findings**

On May 12, 2010, Region III inspectors conducted an initial inspection of an NRC licensee within the State of Indiana. During this inspection, the inspectors identified records of two CTL-owned Troxler portable moisture/density gauges being stored at the licensee's facility in Indianapolis, Indiana, prior to the issuance of the NRC license. Each portable gauge contained a nominal 8 millicuries of cesium-137 and 40 millicuries of americium-241. The records showed that the gauges had been stored and used in Indiana on multiple occasions between July 6, 2006 and August 30, 2009. The Indiana licensee is a sister company of CTL and received their NRC license on August 31, 2009. The licensee indicated that NRC Form 241 for reciprocity had not been filed for calendar years 2006, 2007, 2008, or 2009.

On May 24, 2010, the NRC initiated an inspection to determine the circumstances surrounding the use of byproduct material within NRC jurisdiction by CTL. The CTL radiation safety officer (RSO) confirmed that the company had possessed and used two portable gauges containing sealed sources of byproduct material in Indiana, a non-Agreement State, on multiple occasions between 2006 and 2009 under their State of Illinois license. The company had believed that their State of Illinois license authorized them for "temporary assignments" outside of Illinois for up to 180 consecutive days each with the portable gauges, and that returning a gauge to Illinois allowed them to begin a new 180 day out-of-state assignment. The RSO also confirmed that CTL did not file for reciprocity or possess a specific NRC license for calendar years 2006, 2007, 2008, or 2009 prior to August 31. Records showed that CTL had possessed or used a portable gauge in Gaston, Indiana for one day in 2006. On June 1, 2010, CTL provided NRC an e-mail stating, in part, that CTL had possessed or used portable gauges in Indiana for 277 days in 2007, 335 days in 2008, and 204 days in 2009 prior to August 31.

Title 10 Code of Federal Regulations (CFR) 30.3(a) states that except as provided in paragraphs (b)(2), (b)(3), (c)(2), and (c)(3) of this section and for persons exempt as provided in this part and part 150 of this chapter, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

Title 10 CFR Part 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

The company's failure to obtain either a specific or general NRC license prior to conducting licensed activities in a non-Agreement State where the NRC maintains jurisdiction is an apparent violation of 10 CFR 30.3(a). Specifically, in 2006, 2007, 2008, and 2009, CTL possessed and used devices containing byproduct material in Indiana, a non-Agreement State, without filing NRC Form 241 or paying the appropriate fee as required by 10 CFR 150.20(b)(1), and in 2007, 2008, and 2009 prior to August 31, CTL did not restrict the possession and use of byproduct material in Indiana to 180 days or less in any calendar year as required by 10 CFR 150.20(b)(4) or obtain a specific NRC license pursuant to 10 CFR 30.3(a).

The root cause of the apparent violation was that the company was unaware of the requirements in 10 CFR 30.3 and 10 CFR 150.20. Specifically, the company was not aware of the requirements to file NRC Form 241 prior to performing licensed activities outside of the State of Illinois, and to either restrict their possession or use of byproduct material in a non-Agreement State to 180 days or less in any calendar year, or to obtain a specific NRC license pursuant to 10 CFR 30.3.

As corrective action, on June 9, 2010, the company retroactively filed NRC Form 241 for calendar years 2006, 2007, 2008, and 2009, paying a total of \$7,000 in reciprocity fees. As further corrective action, the company is now aware of the regulatory requirements for working outside of the State of Illinois. To prevent a similar violation in the future, CTL will use licensed material under an NRC license through a sister company when performing licensed activities in areas where the NRC maintains jurisdiction.

## 2.3 Conclusions

The inspectors identified one apparent violation of 10 CFR 30.3(a), involving CTL's failure to obtain either a specific or general NRC license prior to conducting licensed activities in a non-Agreement State where the NRC maintains jurisdiction. As corrective action, CTL retroactively submitted NRC Form 241 for calendar years 2006, 2007, 2008, and 2009, paying a total of \$7,000 in reciprocity fees. CTL will use licensed material under an NRC license through its sister company when performing licensed activities in areas where the NRC maintains jurisdiction.



### **3 Exit Meeting Summary**

The inspectors discussed the preliminary conclusions as described in this report with the RSO and the company Vice President during the June 7, 2010 telephone exit meeting. The inspectors discussed the inspection findings, the apparent violation, and CTL's corrective actions. The company did not identify any information reviewed during the inspection and proposed for inclusion in the inspection report as proprietary in nature.

#### **LIST OF PERSONS CONTACTED**

- \*& Steven Richter, Radiation Safety Officer, Chicago Testing Laboratory, Inc.
- \* Jay Miller, Vice President, Chicago Testing Laboratory, Inc.
  
- & Individual present during telephonic entrance meeting on May 24, 2010
- \* Individuals present during telephonic exit meeting on June 7, 2010