

September 2, 2010

EA-10-100

Mr. Daniel Schroeder, Operations Manager
Mattingly Testing Services, Inc.
12555 West Andrews Lane
Molt, Montana 59057

SUBJECT: ORDER REVOKING LICENSE (EFFECTIVE IMMEDIATELY)

Dear Mr. Schroeder:

The enclosed Order Revoking License is being issued to Mattingly Testing Services, Inc., (Mattingly) as a result of the U.S. Nuclear Regulatory Commission (NRC) staff's conclusions based on two investigation reports issued by the NRC's Office of Investigations on April 19, 2010, and May 14, 2010, regarding activities at the Mattingly facilities, following an event of a lost radiography exposure device on June 22, 2009, with continuing staff review of the inspections and investigations through August 2010.

During the investigations, the NRC found a number of violations, including deliberate failures to implement the requirements of: (i) Confirmatory Order (EA-08-271), which dispositioned a number of willful safety violations through alternative dispute resolution (ADR) in 2009; (ii) Increased Controls Order (EA-05-090) regarding establishing and maintaining a prearranged response plan with the local law enforcement agency (LLEA); and, (iii) 10 CFR 30.9, "Completeness and Accuracy of Information," regarding Mattingly providing inaccurate information to the NRC about establishing a prearranged response plan with the LLEA. In addition to these deliberate violations, the NRC found that Mattingly failed to implement other requirements of Confirmatory Order (EA-08-271); failed to have a dependable means to transmit information between and among various components used to detect, assess, and respond to unauthorized access to radioactive materials in accordance with Increased Controls Order (EA-05-090); failed to properly secure a radiographic exposure device for transportation leading to its loss in the public domain; and, willfully failed to immediately report the loss of a radiographic exposure device to the NRC.

The numerous failures to implement the requirements of Confirmatory Order (EA-08-271) as specified in this Order are of concern, since those actions were meant to timely correct a number of safety violations identified previously at Mattingly. The repetitive nature of several of the current violations reveals the ineffectiveness of the corrective actions Mattingly committed to during ADR. The deliberate and willful violations, including providing material false statements to NRC inspectors and investigators, jeopardized the public health and safety, and the security of the radioactive materials that the licensee possesses, and as such, represent a significant regulatory concern. The deliberate violations also demonstrate that Mattingly is unable or unwilling to comply with the Commission's requirements to protect the public health and safety and provide for the security of the radioactive materials it possesses.

Mattingly's license authorizes possession of radioactive materials that are considered high-risk, the loss of control of which, whether inadvertent or through a deliberate act, has a potential to

Mattingly Testing Services Inc.

result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. As a result of these significant violations and a resultant loss of reasonable assurance that Mattingly can provide adequate protection of the health and safety of the public, including its workers involved in radiographic operations, the enclosed Order requires an immediate suspension of radiographic operations conducted pursuant to License 25-21479-01; a requirement to place all NRC-licensed materials into secured storage at your permanent facility in Billings, Montana within 48 hours of Mattingly's receipt of this Order; and, transfer of all materials possessed under NRC License 25-21479-01 within 30 days of the date of the enclosed Order to an authorized recipient. Finally, subsequent to NRC confirmation of the transfer of all NRC-licensed material currently possessed, License 25-21479-01 is revoked.

As discussed above, since a number of these violations were found to be deliberate and repeated, pursuant to 10 CFR 2.202(a)(5), the public health and safety requires that this Order be immediately effective.

In accordance with 10 CFR 2.202, you are required to provide an answer to this Order within 20 days of the date of this Order. Failure to comply with the provisions of this Order may result in further civil enforcement action. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

A copy of this letter and its enclosure is being sent to Mr. Mark Ficek, President of Mattingly. While Mr. Ficek is currently prohibited from engaging in NRC-licensed activities, I am permitting him to provide a response to the order, if he desires, within 20 days of the date of the order, under oath or affirmation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure 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>. 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. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Mattingly Testing Services Inc.

Questions concerning the enclosed Order should be addressed to Mr. Art Howell, Director, Division of Nuclear Material Safety, NRC Region IV, Arlington, Texas, who can be reached at 817-860-8106.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

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

Enclosure: As Stated
Distribution: see page 3

cc w/enclosure:
Roy Kemp, Deputy Administrator
Radiation Control Program Director
Division of Quality Assurance

Department of Public Health and
Human Services
2401 Colonial Drive
P.O. Box 202953
Helena, MT 59620-2953

Mr. Mark Ficek, President
Mattingly Testing Services, Inc.
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

Distribution: see page 3

Mattingly Testing Services Inc.

Questions concerning the enclosed Order should be addressed to Mr. Art Howell, Director, Division of Nuclear Material Safety, NRC Region IV, Arlington, Texas, who can be reached at 817-860-8106.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

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

Enclosure: As Stated
Distribution: see page 3

cc w/enclosure:
Roy Kemp, Deputy Administrator
Radiation Control Program Director
Division of Quality Assurance

Department of Public Health and
Human Services
2401 Colonial Drive
P.O. Box 202953
Helena, MT 59620-2953

Mr. Mark Ficek, President
Mattingly Testing Services, Inc.
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

DISTRIBUTION: RidsSecyMailCenter Resource; RidsOcaMailCenter Resource;
RidsOgcMailCenter Resource; RidsEdoMailCenter Resource;
RidsNmssOd Resource; RidsFsmeOd Resource;
RidsOiMailCenter Resource; RidsOpaMail Resource; **(when publicly available)**
RidsOcofMailCenter Resource; RidsOigMailCenter Resource;
RidsRgn1MailCenter Resource; RidsRgn3MailCenter Resource;

OEMailResource;

Elmo.Collins@nrc.gov;
Art.Howell@nrc.gov;
Karla.Fuller@nrc.gov;
Bill.Maier@nrc.gov;
Victor.Dricks@nrc.gov;
Lara.Uselding@nrc.gov;
Chuck.Cain@nrc.gov;
Vivian.Campbell@nrc.gov;
Jack.Whitten@nrc.gov;
Denise.Freeman@nrc.gov;
Pete.Hernandez@nrc.gov;
Carolyn.Faria-Ocasio@nrc.gov;

OEWEB Resource;

Chuck.Casto@nrc.gov;
William.Jones@nrc.gov;
Ray.Kellar@nrc.gov;
Christi.Maier@nrc.gov;
Randy.Erickson@nrc.gov;
Rachel.Browder@nrc.gov;
Blair.Spitzberg@nrc.gov;
Marisa.Herrera@nrc.gov;
Rick.Munoz@nrc.gov;
Sue.Trifiletti@nrc.gov;
Glenda.Villamar@nrc.gov;
Crystal.Holland@nrc.gov;

Nick.Hilton@nrc.gov;
Gregory.Bowman@nrc.gov;
S.Woods@nrc.gov;
Nicole.Coleman@nrc.gov;
Leelavathi.Sreenivas@nrc.gov;
Kerstun.Day@nrc.gov;
Robert.Summers@nrc.gov;
Christian.Einberg@nrc.gov;
Michele.Burgess@nrc.gov;
Darlene.Eubanks-White@nrc.gov;
Duane.White@nrc.gov;
Molly.barkman@nrc.gov

R4ALLEGATION.resource@nrc.gov;Hard copy:

RIV Materials Docket File (5th Floor)

ADAMS: ML102440180 X Publicly Available

X Non-Sensitive

OFFICE	MI:NMSBA	C:NMSBA	SES	RC	C:ACES	D:DNMS
NAME	RMunoz	VCampbell /RA/	RKellar /RA/	KFuller/RA/	WBJones/RA/	ATHowell/RA/
DATE	7/30/10	7/30/10	7/28/10	7/28/10	7/28/10	8/3/10

OFFICE	DRA	FSME	OGC	OE	RA	D:OE
NAME	CACasto	JLuehman*Email	MBarkman/RA/	NHilton/RA/	EECollins/RA/for	RZimmerman
DATE	8/3/10	8/27/10	9/2/10	8/26/10	8/27/10	9/2/10