



~~OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION~~

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

July 11, 2013

EA-13-091

Mr. Dan Larson, President
American Engineering Testing, Inc.
550 Cleveland Avenue North
St. Paul, Minnesota 55114

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY – \$7,000; NRC ROUTINE INSPECTION REPORT
NO. 03034637/2013001(DNMS) – AMERICAN ENGINEERING TESTING, INC.

Dear Mr. Larson:

This refers to the inspection conducted April 5, 2013, at the American Engineering Testing, Inc. facility in Gary, Indiana, with continued in-office review through April 10, 2013. The purpose of the inspection was to review licensed activities to ensure that they were being performed in accordance with NRC requirements. During the inspection, a security-related violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with Greg Owens during the teleconferenced inspection exit meeting on April 10, 2013. Details regarding the apparent violation were provided in NRC Inspection Report No. 03034637/2013001(DNMS) dated May 2, 2013.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated May 31, 2013, you provided a response to the apparent violation.

Based on the information developed during the inspection, as documented in the inspection report, and the information that you provided in your letter dated May 31, 2013, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the Notice of Violation (Notice) in Enclosure 1 (non-public) and the circumstances surrounding it are described in detail in our inspection report dated May 2, 2013.

The violation is of concern to the NRC for the reasons stated in Enclosure 2. Therefore, the violation has been categorized, in accordance with the NRC Enforcement Policy, as a Severity Level III violation. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is normally considered for a Severity Level III violation.

The enclosures contain Sensitive
Unclassified Non-Safeguards Information.
Upon separation, this cover letter is
decontrolled.

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Because your facility has been the subject of an escalated enforcement action within the last two years¹, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. As described in Enclosure 2, this assessment resulted in a proposed civil penalty of \$7,000.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, was adequately addressed on the docket in NRC Inspection Report No. 03034637/2013001(DNMS) dated May 2, 2013, and in your response dated May 31, 2013. 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. Additionally, if you choose to respond, please mark your entire response "Security-Related Information – Withhold from Public Disclosure under 10 CFR 2.390." In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for any response to this letter. However, to the extent possible, your response, if any, should not include any personal privacy, proprietary, or safeguards information.

After receiving your letter dated May 31, 2013, we carefully considered all of the information that you provided to us. You indicated that you had submitted documentation for two of the ISC employees in a response to a violation identified by our inspectors in August of 2012, which may have led you to believe that you had addressed the non-compliance. In 2012, we provided a limited review of the information to provide us with a level of assurance that you were taking actions to restore compliance, and we planned to fully evaluate your corrective actions during a subsequent inspection. This follow-up inspection resulted in our identification of the additional violation of NRC requirements. Although we may have had an opportunity to identify the issues in 2012, that does not negate the fact that these issues are violations of NRC requirements and need to be corrected. As an NRC licensee, you are required to comply with NRC regulations and to fully implement your procedures to achieve and sustain compliance.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential

¹ On December 26, 2012, the NRC issued a Severity Level III violation for a security-related issue identified during an August 2012 inspection at your Gary, Indiana facility (EA-12-211)

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issues: 1) whether violations occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation. Additional information concerning the NRC's ADR program can be found at <http://www.internal.nrc.gov/OE/ADR/post-invest-adr-home.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact the ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing this issue through the ADR program. You may also contact Steven Orth, Enforcement Officer, at (630) 810-4370 for additional information. If you decide to pursue ADR, please contact Mr. Orth within 10 days of the date of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. However, because of the Security-Related Information contained in the enclosures, and in accordance with 10 CFR 2.390, copies of the enclosures will not be available for public inspection.

Additionally, the enclosures must be protected from unauthorized disclosure. Security-Related Information is discussed in Regulatory Information Summary RIS-2005-031, "Control of Security Related Sensitive Unclassified Non-Safeguards Information" (ML053480073), which is available on the NRC Web site or in ADAMS.

Sincerely,

/RA by C. Pederson for/

Charles A. Casto
Regional Administrator

Docket No. 030-34637
License No. 22-20271-02

Enclosures:

1. Notice of Violation and Proposed
Imposition of Civil Penalty (Non-Public)
2. Discussion of the Violation, Including
Assessment of the Civil
Penalty (Non-Public)

cc w/encls: Greg Owens, RSO
State of Indiana

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cc w/encls: Greg Owens, RSO
State of Indiana

SEE PREVIOUS CONCURRENCE

FILE NAME: G:\ORAI\IICS\ENFORCEMENT\Cases\Enforcement Cases 2013\EA-13-091 draft Final Action.docx

OFFICE	RIII	RIII	RIII	RIII	D:OE	D:OGC	D:FSME	RIII	RIII
NAME	Pelke	McCraw	Boland	Rubic	Zimmerman ² KDay for	Scott ³ EMonteith for	Satorius ³ MBurgess for	Orth	Casto CPederson for
DATE	6/12/13	6/12/13	6/12/13	6/17/13	7/05/13	7/01/13	7/01/13	7/11/13	7/11/13

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- 2 OE concurrence received via email from K. Day on July 5, 2013
3 OGC "No legal objection" received via email from E. Monteith on July 1, 2013
3 FSME concurrence received via email from M. Burgess on July 1, 2013

Letter to Dan Larson from Charles A. Casto dated July 11, 2013

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