



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

May 20, 2016

IA-16-040

Martin Ferenc

**[NOTE: HOME ADDRESS DELETED
UNDER 10 CFR 2.390]**

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 1-2016-002

Dear Mr. Ferenc:

This letter refers to an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) between October 30, 2015, and February 2, 2016, to determine, in part, whether you, while employed as a radiographer at Applied Technical Services, Inc. (ATS), deliberately failed to follow NRC regulations and ATS procedures regarding the conduct of radiography at a temporary job site located on the National Aeronautics and Space Administration (NASA) Langley Research Center in Hampton, Virginia, an area of exclusive Federal jurisdiction. A copy of a letter to ATS discussing the OI investigation and apparent violations, including a Factual Summary of NRC's Investigation Report No. 1-2016-002, is enclosed with this letter (Enclosure 1).

Based on the results of the NRC investigation, the NRC made a preliminary determination that you failed to follow NRC regulations and ATS procedures while conducting industrial radiography at NASA Langley Research Center. Specifically, on October 20, 2015, while taking images of welds on underground pipelines, you failed to conduct a survey of the camera and guide tube after taking an image of a pipeline in accordance with Title 10 of the Code of Regulations (CFR) 34.49 and ensure continuous direct visual surveillance to protect against unauthorized entry into a radiation area or high radiation area in accordance with Condition 15 of State of Georgia license (GA-896-1) and 10 CFR 150.20(b)(5). In addition, the NRC has preliminarily determined that you deliberately failed to post the area where industrial radiography was being performed with conspicuous radiation or high radiation signs to establish a radiological boundary. Your apparent deliberate actions caused ATS to be in violation of 10 CFR 34.53.

Accordingly, with regard to your failure to post the area where industrial radiography was being performed, the NRC has determined that you committed an apparent violation of 10 CFR 30.10(a)(1), "Deliberate Misconduct." The NRC's deliberate misconduct rule prohibits employees of any licensee from engaging in deliberate misconduct that causes, or would have caused if not detected, a licensee to be in violation of any rule, regulation or order. In 10 CFR 30.10(c)(1), deliberate misconduct by a person is defined as an intentional act or omission that the person knows would cause a licensee to be in violation of any rule, regulation or order.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Your apparent violation of 10 CFR 30.10(a)(1) is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The NRC Enforcement Policy is included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. A copy of the Apparent Violation Being Considered for Escalated Enforcement is enclosed with this letter (Enclosure 2).

Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued at this time. Please be advised that the number and characterization of the apparent violations described herein may change as a result of further NRC review.

We believe we have sufficient information to make an enforcement decision regarding the apparent violation. Therefore, you may accept the violation as characterized in this letter and notify us of that decision within 10 days. Alternatively, before the NRC makes its final enforcement decision, you may choose to provide your perspective on this matter, including the significance, cause, and corrective actions, as well as any other information that you believe the NRC should take into consideration by: (1) requesting a pre-decisional enforcement conference (PEC) to meet with the NRC and provide your views in person; (2) requesting Alternative Dispute Resolution (ADR); or (3) responding to the apparent violation in writing.

If you choose to request a PEC, the meeting should be held in our office in King of Prussia, PA, within 30 days of the date of this letter. The conference will include an opportunity for you to provide your perspective on these matters and any other information that you believe will assist the NRC in making an enforcement decision.

In lieu of a PEC, you may also request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation; a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. The ADR mediation session should be held in our office in King of Prussia within 45 days of the date of this letter.

Either the PEC or the ADR would be closed to public observation because the NRC's preliminary findings are based on an NRC OI report that has not been publicly disclosed. However, the time and date of the PEC or ADR will be publicly announced.

If you choose to provide a written response, it should be sent to the NRC within 30 days of the date of this letter. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. You should clearly mark the response as a "Response to Apparent Violations in NRC Investigation No. 1-2016-002; IA-16-040," 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 I, 2100 Renaissance Boulevard, King of Prussia, PA 19406.

Please contact Monica Ford, Acting Chief, Commercial, Industrial, R&D, and Academic Branch, at 610-337-5214 within 10 days of the date of this letter to notify the NRC which of the above options you choose. If an adequate response is not received with the specified time or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

A copy of this letter will not be made publicly available at this time. However, if the NRC subsequently issues an enforcement action to you, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, with your home address removed, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at www.NRC.gov/reading-rm/adams.html.

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, may be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

/RA J. L. Nick for/

James M. Trapp, Director
Division of Nuclear Materials Safety

Docket No. 03038879
License No. 10-35278-01

Enclosures:

1. Letter to ATS Regarding OI Investigation Report No. 1-2016-002
2. Apparent Violation Being Considered for Escalated Enforcement

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*See previous concurrence page **Second review OFFICIAL RECORD COPY

Letter to M. Ferenc from J. Trapp dated May 20, 2016

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Apparent Violation Being Considered for Escalated Enforcement

10 CFR 30.10(a) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order.

10 CFR 30.10(c) states, in part, that deliberate misconduct means an intentional act or omission that a person knows would cause a licensee to be in violation of any rule, regulation or order.

Contrary to the above, on October 20, 2015, while working as a radiographer for Applied Technical Services, Inc. (ATS), you engaged in deliberate misconduct that caused the licensee to be in violation of NRC regulations. Specifically, while conducting industrial radiography at a temporary job site at the National Aeronautics and Space Administration (NASA) Langley Research Center in Hampton, Virginia, you intentionally did not conspicuously post the area where industrial radiography was being performed with radiation area or high radiation area signs to establish a radiological boundary. Your actions caused ATS to be in violation of 10 CFR 34.53 which requires that all areas in which industrial radiography is being performed must be conspicuously posted as required by 10 CFR 20.1902(a) and (b).