



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

October 6, 2016

EA-16-152

Mr. Daniel J. Larson, PE
Chief Executive Officer
American Engineering Testing, Inc.
550 Cleveland Avenue North
St. Paul, MN 55114

SUBJECT: RESULTS OF NRC INVESTIGATION REPORT NO. 3-2015-018;
AMERICAN ENGINEERING TESTING, INC.

Dear Mr. Larson:

The U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection on August 19, and October 7, 2015, at your facilities in St. Paul, Minnesota, and Gary, Indiana; with continued in-office review through November 19, 2015. The details of the inspection were documented in the non-public version of NRC Inspection Report No. 03034637/2015001(DNMS), issued on December 15, 2015. During the inspection, the NRC identified one unresolved item requiring further agency review. The NRC Office of Investigations began an investigation into this issue on September 1, 2015, and completed the investigation on July 11, 2016. A factual summary of the NRC investigation is enclosed.

Based on the results of the NRC inspection and investigation, one apparent violation of NRC requirements 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 involves a deliberate failure to conduct radiography at a temporary job site with at least two qualified individuals, as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 34.41(a). The circumstances surrounding the apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with your Radiation Safety Officer, Mr. Gregory Owens, during an exit meeting by telephone on August 29, 2016.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation addressed in this letter and its enclosure within 30 days of the date of this letter; (2) request a Predecisional Enforcement Conference (PEC); or (3) request Alternate Dispute Resolution (ADR). **Please contact Mr. Aaron T. McCraw at 630-829-9650 or Aaron.McCraw@nrc.gov within ten days of the date of this letter to notify the NRC of your intended response.**

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation; EA-16-152," and should include, for the apparent violation: (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 was or 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 violations. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be useful in preparing your response. You can find the information notice on the NRC's 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.

If you choose to request a PEC, it will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the PEC may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken.

In lieu of a PEC, you may also 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 conflicts using a third party neutral. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "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's 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's 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.

Since you identified the violation, a civil penalty may not be warranted in accordance with Section 2.3.4 of the Enforcement Policy. In addition, based upon NRC's understanding of the facts and your corrective actions, it may not be necessary to conduct a PEC in order to enable the NRC to make a final enforcement decision. Our final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken. If a PEC is held, the NRC will issue a press release to announce the time and date of the conference.

In addition, please be advised that the number and characterization of the 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.

D. Larson

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC's Public Document Room or from the NRC's Agency Wide Documents Access and Management System (ADAMS), accessible from the NRC's 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 publicly available without redaction.

Please feel free to contact Ms. Deborah A. Piskura, of my staff if you have any questions regarding this inspection. Ms. Piskura can be reached at 630-829-9867.

Sincerely,

/RA/

John B. Giessner, Director
Division of Nuclear Materials Safety

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

Enclosure:
Factual Summary of NRC Investigation

cc: State of Minnesota
State of Indiana

D. Larson

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John B. Giessner, Director
Division of Nuclear Materials Safety

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

Enclosure:
Factual Summary of NRC Investigation

cc: State of Minnesota
State of Indiana

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See next page

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NAME	DPiskura:cl/ps		AMcCraw		RSkokowski		PHolahan via email ¹		JGiessner	
DATE	9/20/2016		9/21/2016		9/22/2016		10/4/2016		10/6/2016	

¹ (OE) review and concurrence received via e-mail from (KNorman) on (10/04/16)

OFFICIAL RECORD COPY

Letter to Daniel Larsen from John Giessner dated October 6, 2016

SUBJECT: RESULTS OF NRC INVESTIGATION REPORT NO. 3-2015-018;
AMERICAN ENGINEERING TESTING, INC.

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FACTUAL SUMMARY OF OFFICE OF INVESTIGATIONS REPORT 3-2015-018

On September 1, 2015, the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI), Region III Field Office, initiated an investigation to determine whether a radiographer employed by American Engineering Testing, Inc. (AET) willfully performed radiographic operations without at least one other qualified individual present. On July 11, 2016, the OI completed its investigation.

On August 19, 2015, an NRC inspector questioned the licensee regarding an exposure reading for a radiographer who performed work at AET's field office in Gary, Indiana. During the discussion, the licensee indicated that the radiographer no longer worked for AET due to the individual performing radiography without another qualified radiographer or radiographer's assistant present. This apparent violation occurred on February 1, 2015. The radiographer and another qualified individual, the assistant radiographer performed radiography on numerous bridge components at the customer's facility in Gary, Indiana, in the week prior to February 1, 2015. Upon examination of the film by the customer, the film was determined to be out of specification. The customer requested the radiographer re-do the work, which would take several hours to perform. During the investigation, the assistant radiographer stated that on Saturday, January 31, 2015, he was willing to re-do the work but the radiographer indicated that they would re-do it later. The radiographer testified that he requested the assistant radiographer stay late to re-do the work and the assistant declined to stay.

On February 1, 2015, the radiographer arrived at the customer's facility, retrieved the radiography camera and proceeded to re-do all the work. The radiographer submitted the radiography film to the customer and AET for their records. The licensee reviewed the radiography film the following day (February 2, 2015) and noted the work done. The licensee then questioned the radiographer about when he performed the work, and the radiographer indicated that he completed the work the previous day. Since the radiographer completed the work on Sunday, the licensee examined key card entry data from the customer's security office and determined that the individual worked alone. When the licensee questioned the radiographer about working alone on February 1, 2015, the radiographer admitted to working alone to complete the work.

The licensee provided initial and refresher training to the radiographer on the NRC's rules and regulations, including the regulations in 10 CFR, Part 34, "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations." The radiographer successfully passed tests on the rules and regulations in Part 34, including Section 34.41(a). The radiographer also admitted that he was aware of the regulations. The radiographer testified that he felt extremely pressured, and it was more important to complete the work than to follow NRC regulations.

Based on the evidence gathered in the OI investigation, it appears the radiographer willfully violated 10 CFR 34.41(a) by performing radiographic operations alone on February 1, 2015, at a temporary job site in Gary, Indiana. Title 10 CFR 34.41(a), requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has, at a minimum, met the requirements of 10 CFR 34.43(c).

Enclosure