



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
REGION IV  
1600 E. LAMAR BLVD.  
ARLINGTON, TX 76011-4511

October 25, 2016

IA-16-047

Mr. Mark Ficek  
[NOTE: HOME ADDRESS DELETED  
UNDER 10 CFR 2.390]

SUBJECT: ATOMIC SAFETY AND LICENSING BOARD PANEL ORDER 10-905-02-EA-BD01  
AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Ficek:

This letter refers to the Atomic Safety and Licensing Board Order (Accepting Proposed Settlement Agreement and Dismissing Proceeding) issued on February 22, 2011, (Agencywide Documents Access and Management System (ADAMS) ML110530327) and the events that resulted in your apparent noncompliance with the terms of the Board-approved Settlement Agreement.

On May 31, 2016, the President and radiation safety officer (RSO) of Metals Testing Services, Inc., (MTS), informed you that he had resigned effective May 29, 2016, without providing prior notification of his intent. On June 6, 2016, you informed the NRC that the President/RSO had resigned and the controlling interest of MTS had reverted to you. Condition 34 of the Settlement Agreement requires, in part, that you may not own a controlling share and/or interest of an NRC license. Prior to the President/RSO's departure, all of the licensed material possessed under the license had been transferred to another NRC-licensed company. Therefore, you did not have possession of any licensed material.

The NRC Region IV staff worked with you to resolve this issue, which included naming a replacement RSO and an individual to assume the controlling share of MTS. Accordingly, on June 24, 2016, you submitted a license amendment request (ML16181A076). On August 2, 2016, the NRC issued Amendment 1 to NRC Materials License No. 37-29406-02 (ML16215A462 and ML16215A465), providing consent to the transfer of control of MTS and authorizing a replacement RSO, as described in the amendment request.

The NRC evaluated an apparent violation of Condition 34 of the Settlement Agreement in accordance with the NRC Enforcement Policy, which is available on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. Based on the NRC's review of the available information, the NRC determined that you were in violation of Condition 34 between the time that the former President/RSO for MTS resigned to the time that the new controlling owner and RSO were added to the license for MTS, as discussed above. This violation is normally characterized as a Severity Level IV violation in accordance with Section 6.3.d.7 of the NRC Enforcement Policy.

As a result of its evaluation, the NRC determined that the violation resulted from matters not entirely within your control. Additionally, you provided timely notification of the change in ownership to the NRC in observance of the violation of the terms of the Settlement Agreement, and you took prompt actions to restore compliance. Based on these facts, I have been authorized, in consultation with the Director, Office of Enforcement, to exercise enforcement discretion in accordance with Section 3.5, "Violations Involving Special Circumstances," of the NRC Enforcement Policy and refrain from issuing an enforcement action for the violation of Condition 34 of the Settlement Agreement.

You are reminded that the Settlement Agreement, as approved by the Board's Order, remains in effect in its entirety. Specifically, you are reminded that Condition 36 of the Settlement Agreement prohibits you from engaging in NRC-licensed activities and provides a list of examples of the types of activities you must refrain from engaging in until September 2, 2017. Because the list in Condition 36 is not exhaustive, the NRC encourages you to contact the NRC, Region IV, Director of the Division of Nuclear Materials Safety if you are unsure whether a particular activity constitutes "NRC-licensed activity."

The NRC concludes that the information regarding this violation is adequately addressed on the docket. You are not required to respond to this letter unless the description herein does not accurately reflect the facts, your actions, or your situation. In that case, or if you choose to respond, clearly mark your response as a "Reply of an Exercise of Enforcement Discretion, IA-16-047," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Director, Division of Nuclear Materials Safety, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and marked "Open by Addressee Only," within 30 days of the date of this letter.

Your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's 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 information so that it can be made available to the public without redaction.

If personal privacy is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 2.390, "Agency Rules of Practice and Procedure," a copy of this letter will be made available for public inspection in the NRC's Public Document Room or from the NRC's ADAMS, accessible as specified above.

M. Ficek

- 3 -

Should you have any questions regarding this matter, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch B, at 817-200-1455.

Sincerely,

/RA/

Mark R. Shaffer, Director  
Division of Nuclear Materials Safety

M. Ficek

- 3 -

Should you have any questions regarding this matter, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch B, at 817-200-1455.

Sincerely,

/RA/

Mark R. Shaffer, Director  
Division of Nuclear Materials Safety

**DISTRIBUTION:**

[RidsOeMailCenter Resource;](#)

[Kriss.Kennedy@nrc.gov](mailto:Kriss.Kennedy@nrc.gov);

[Scott.Morris@nrc.gov](mailto:Scott.Morris@nrc.gov);

[Mark.Shaffer@nrc.gov](mailto:Mark.Shaffer@nrc.gov);

[Ray.Kellar@nrc.gov](mailto:Ray.Kellar@nrc.gov);

[Michael.Vasquez@nrc.gov](mailto:Michael.Vasquez@nrc.gov);

[John.Kramer@nrc.gov](mailto:John.Kramer@nrc.gov);

[Leelavathi.Sreenivas@nrc.gov](mailto:Leelavathi.Sreenivas@nrc.gov);

[R4DNMS\\_SEC@nrc.gov](mailto:R4DNMS_SEC@nrc.gov);

[Jenny.Weil@nrc.gov](mailto:Jenny.Weil@nrc.gov);

[Angel.Moreno@nrc.gov](mailto:Angel.Moreno@nrc.gov);

[Shyrl.Coker@nrc.gov](mailto:Shyrl.Coker@nrc.gov);

[OEWEB Resource;](#)

[Karla.Fuller@nrc.gov](mailto:Karla.Fuller@nrc.gov);

[Bill.Maier@nrc.gov](mailto:Bill.Maier@nrc.gov);

[Linda.Howell@nrc.gov](mailto:Linda.Howell@nrc.gov);

[Vivian.Campbell@nrc.gov](mailto:Vivian.Campbell@nrc.gov);

[Michael.Hay@nrc.gov](mailto:Michael.Hay@nrc.gov);

[Casey.Aldredge@nrc.gov](mailto:Casey.Aldredge@nrc.gov);

[Marisa.Herrera@nrc.gov](mailto:Marisa.Herrera@nrc.gov);

[Michael.Layton@nrc.gov](mailto:Michael.Layton@nrc.gov);

[Michele.Burgess@nrc.gov](mailto:Michele.Burgess@nrc.gov);

[Jeremy.Bowen@nrc.gov](mailto:Jeremy.Bowen@nrc.gov);

[Jody.Martin@nrc.gov](mailto:Jody.Martin@nrc.gov);

[RidsOpaMail Resource;](#)

[Patricia.Holahan@nrc.gov](mailto:Patricia.Holahan@nrc.gov);

[Francis.Peduzzi@nrc.gov](mailto:Francis.Peduzzi@nrc.gov) ;

[Jack.Whitten@nrc.gov](mailto:Jack.Whitten@nrc.gov);

[Nick.Hilton@nrc.gov](mailto:Nick.Hilton@nrc.gov);

[S.Woods@nrc.gov](mailto:S.Woods@nrc.gov);

[Kerstun.Norman@nrc.gov](mailto:Kerstun.Norman@nrc.gov);

[Victor.Dricks@nrc.gov](mailto:Victor.Dricks@nrc.gov);

[Russell.Arrighi@nrc.gov](mailto:Russell.Arrighi@nrc.gov);

[Sophie.Holiday@nrc.gov](mailto:Sophie.Holiday@nrc.gov);

[R4DNMS\\_MS-A@nrc.gov](mailto:R4DNMS_MS-A@nrc.gov);

[Michael.Hay@nrc.gov](mailto:Michael.Hay@nrc.gov);

Document: S:\RAS\ACES\ENFORCEMENT\EA CASES - OPEN\MTS - Metals Testing Services\EED\_IA-16-047\_Ficek.docx

ADAMS ACCESSION NUMBER: ML

SUNSI Review by: JEV		ADAMSX Yes	X Publicly Available		X Non-Sensitive	Keyword:N/A
OFFICE	RIV:ACES	TL:ACES	NMSS	OE	OGC	
NAME	JKramer	MHay	MBurgess	PHolahan	Chair NLO	
SIGNATURE	/RA/	/RA/	/RA/ E	/RA/ E	/RA/ E	
DATE	10/07/16	10/07/16	10/18/16	10/20/16	10/14/16	
OFFICE	D:DNMS					
NAME	MShaffer					
SIGNATURE	/RA/					
DATE	10/25/16					

OFFICIAL RECORD COPY