



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

January 18, 2017

EA-16-152

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

SUBJECT: NOTICE OF VIOLATION – NRC ROUTINE INSPECTION REPORT
NO. 03034637/2015001(DNMS) AND NRC INVESTIGATION REPORT
NO. 3-2015-018 – AMERICAN ENGINEERING TESTING, INC.

Dear Mr. Larson:

On August 19 and October 7, 2015, with continued in-office review through November 19, 2015, the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your St. Paul, Minnesota and Gary, Indiana facilities. 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. The NRC Office of Investigations began an investigation on September 1, 2015, and the investigation was completed on July 11, 2016. The purpose of the investigation was to determine whether a radiographer willfully failed to follow the regulation in Title 10 of the *Code of Federal Regulations* (CFR) 34.41(a) requiring that while performing radiography the radiographer be accompanied by at least one other qualified individual. Based on the results of the inspection and investigation, the NRC identified an apparent willful violation of NRC requirements. 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.

In the letter dated October 6, 2016, transmitting the results of the NRC Investigation, we provided you with the opportunity to address the apparent violation identified in the report by attending a predecisional enforcement conference, providing a written response, or requesting alternate dispute resolution before we made our final enforcement decision. In a letter, dated November 1, 2016, you provided a response to the apparent violation.

Based on the information developed during the inspection and investigation, and the information that you provided in your response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in our October 6, 2016, letter. The violation involves the deliberate failure to conduct radiographic operations at a temporary job site with at least two qualified individuals, as required by 10 CFR 34.41(a). Specifically, during the August 19, 2015, inspection, licensee staff informed the inspector that a radiographer willfully performed radiographic operations on February 1, 2015, without another qualified individual present.

Willful violations of NRC requirements cannot be tolerated. The failure to perform radiographic operations with two qualified individuals is a significant safety concern. The purpose of the second qualified individual is to provide immediate assistance when needed and to prevent unauthorized entry into the restricted area where radiographic operations are being performed. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$14,000 is considered for a Severity Level III violation.

Because the violation was willful, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Credit was warranted for *Identification* because your staff identified that a radiographer performed radiographic operations alone and informed the inspector of the circumstances during a routine inspection. Credit was also warranted for *Corrective Action* that included terminating the radiographer's employment, and discussing this incident with the radiography staff during annual refresher training in February 2015 and February 2016, emphasizing the importance of complying with the requirement to have two qualified individuals present during radiographic operations.

Therefore, to encourage prompt identification and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 03034637/2015001(DNMS) and your letter dated November 1, 2016. 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for Public inspection in the NRC Public Document Room and in 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>. 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. If personal privacy or proprietary information 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 information, 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 10 CFR 2.390(b) to support a request for withholding confidential commercial or

D. Larson

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financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by Kenneth G. O'Brien acting for/

Cynthia D. Pederson
Regional Administrator

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

Enclosure:
Notice of Violation

cc: State of Minnesota
State of Indiana

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Letter to Daniel Larson from Cynthia D. Pederson dated January 18, 2017

SUBJECT: NOTICE OF VIOLATION – NRC ROUTINE INSPECTION REPORT
NO. 03034637/2015001(DNMS) AND NRC INVESTIGATION REPORT
NO. 3-2015-018 – AMERICAN ENGINEERING TESTING, INC.

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OFFICIAL RECORD COPY

1 Concurrence provided by email from Robert Sun dated December 21, 2016.

2 Concurrence provided by email from Daniel Straus dated January 10, 2017.

NOTICE OF VIOLATION

American Engineering Testing
St. Paul, Minnesota

Docket No. 030-34637
License No. 22-20271-02
EA-16-152

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 19 and October 7, 2015, with continued in-office review through November 19, 2015, and an NRC Office of Investigations investigation completed on July, 11, 2016, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (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 met, at a minimum, the requirements of 10 CFR 34.43(c). Radiography may not be performed if only one qualified individual is present.

Contrary to the above, on February 1, 2015, radiography was performed at a temporary job site in Gary, Indiana, and the radiographer was not accompanied by at least one other qualified radiographer or an individual who had at a minimum met the requirements of 10 CFR 34.43(c). Specifically, the radiographer performed radiography without another qualified individual present.

This is a Severity Level III Violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03034637/2015001 and your letter, dated November 1, 2016. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-16-152," 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 III, 2443 Warrenville Road, Lisle, IL 60532 within 30 days of the date of the letter transmitting this Notice of Violation.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for Public inspection in the NRC Public Document Room or in 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Enclosure

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 18th day of January 2017