

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

BEFORE THE OFFICE OF ENFORCEMENT

In the Matter of

TESTCO, INC. AND  
JAMES L. SHELTON  
Greensboro, North Carolina

)  
)  
) Docket No. 150-00032  
) General License (10 CFR 150.20)  
) EA 95-101 and IA 95-055

SETTLEMENT AGREEMENT

On October 31, 1995, the NRC issued a written Notice of Violation and Proposed Imposition of Civil Penalty - \$5,000 (Notice) to Testco, Inc. (Licensee or TESTCO), and an Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) to Mr. James Shelton. The Notice and the Order stated the provisions of the NRC's requirements the Licensee had violated and the amount of the civil penalty proposed for the violation.

As a result of the Licensee's failure to adequately respond to the Notice, the NRC issued on March 19, 1996, an Order Imposing Civil Monetary Penalty - \$5,000. By a letter dated July 20, 1996, the Licensee requested a hearing concerning this matter before the Atomic Safety and Licensing Board, and the Board subsequently granted the request.

In telephone discussions on September 5 and 9, 1996, between Mr. James Shelton, President of TESTCO, and Mr. James Lieberman, Director, Office of Enforcement, Mr. Shelton indicated that TESTCO desires to settle this matter without further litigation, as noted below. The NRC staff concludes that this Settlement Agreement best serves the interests of the public and the parties, and the purposes of the Atomic Energy Act of 1954, as amended, and the NRC's requirements.


Therefore, pursuant to Section 81, Subsections (b) and (o) of Section 161, and Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § § 2111, 2201(b), 2201(o), and 2282), and 10 C.F.R. § 2.203, the October 31, 1995, and March 19, 1996 Orders are hereby modified as follows:

1. Mr. Shelton is prohibited from engaging in licensed activities in areas under NRC jurisdiction until October 31, 1996. For purposes of this Settlement Agreement (Settlement), areas under NRC jurisdiction are areas in non-Agreement States, offshore waters, or any areas under exclusive Federal jurisdiction.
2. Prior to conducting licensed activities in NRC jurisdiction after November 1, 1996, the Licensee is required to submit an NRC Form 241 that covers the remainder of calendar year 1996 (i.e., until December 31, 1996). The Licensee is also required to submit a NRC Form 241 prior to conducting licensed activities in calendar year 1997 and calendar year 1998. These submittals would be in accordance with 10 CFR 150.20(b); however, the Licensee should be aware that if it performs work in areas under NRC jurisdiction for more than 180 days in any calendar year, the Licensee is required to apply for a specific NRC license. Fees are required to be submitted upon each filing of NRC Form 241 and before commencing work. However, a separate fee is not required for the weekly notification under Paragraph 3 below.

3. Until October 31, 1998, following submittals of the yearly NRC Form 241 under Paragraph 2 above, Mr. James Shelton, on behalf of Testco, Inc., shall notify NRC Region II, by 9:00 a.m. EST Monday (or Tuesday, if Monday is a Federal holiday) of each week, whether the Licensee plans to perform radiography work in areas under NRC jurisdiction. Notification shall be made to the Chief, Materials Licensing/Inspection, Branch 1, by facsimile at (404) 331-7437 using the attached form, and receipt shall be verified by calling (404) 331-5624.
  - A. If radiography work is planned, the Licensee shall provide the location of the field sites under NRC jurisdiction where the work is planned that week, as well as the specific date(s) and time(s). Inasmuch as the Licensee is required to submit to the NRC written notification on a weekly basis, the provisions of 10 CFR 150.20(b)(1) requiring that additional NRC Form 241s be filed for the remainder of each calendar year prior to engaging in licensed activities are waived; the Licensee is not required to comply with the three day notification requirement as long as it is making the weekly notifications to NRC Region II.
  - B. If unplanned radiography work arises after the weekly notification, the new work cannot be performed unless the NRC has been provided a 24-hour written notification. Telephone notification is not acceptable.


- C. Notification is required to include work on Federal property in Agreement States, unless the Licensee has a written statement from the Federal agency where work is planned that the area is not under exclusive Federal jurisdiction.
4. The Licensee agrees to pay a civil penalty of \$1,000. The Licensee shall pay \$500 within two weeks of the date of this Settlement and \$500 no later than October 31, 1996. If the \$1,000 Penalty is not paid in full by October 31, 1996, TESTCO agrees to pay the full penalty described in the October 31, 1995 Notice (\$5,000) by November 30, 1996, and waives its right for a hearing concerning the civil penalty imposed by the March 19, 1996 Order.
5. The Licensee and Mr. Shelton agree to withdraw their respective requests for hearing in Docket Nos. EA 95-101 and IA 95-055 (now consolidated before an Atomic Safety and Licensing Board) in consideration of the modification of the October 31, 1995 and March 19, 1996 Orders, as provided under Paragraphs 1 through 4 above.
6. If this Settlement is violated, the October 31, 1995 and the March 19, 1996 Orders shall be reinstated, and Mr. Shelton and the Licensee agree not to contest the reinstatement these Orders.

7. The staff, Mr. Shelton, and TESTCO shall jointly move the Atomic Safety and Licensing Board designated in the above-captioned proceedings for orders approving this Settlement and terminating the proceedings.

  
James Shelton, as an Individual

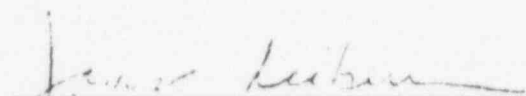
09/13/96  
Date

TESTCO, INC.

  
James Shelton, President

09/13/96  
Date

U. S. NUCLEAR REGULATORY COMMISSION

  
James Lieberman, Director  
Office of Enforcement

9/16/96  
Date

Fax To: Chief, Materials Licensing/Inspection, Branch 1  
From: James Shelton, President, Testco  
Subject: Notification of Work in Areas Under NRC Jurisdiction  
For the Week of \_\_/\_\_/\_\_

1. Is radiography work planned in non-Agreement States or offshore waters?  
Yes/No
  - A. If the answer to Question 1 is yes, skip to 3.
  - B. If the answer to Question 1 is no, and the work planned is not on a Federal property, skip to 6.
  - C. If the answer to Question 1 is no, and the work planned is on a Federal property, go to 2.
2. Is there a written statement from the Federal agency stating that the area is not under exclusive Federal jurisdiction?  
Yes/No
  - A. If the answer to Question 2 is no, proceed to 3.
  - B. If the answer to Question 2 is yes, skip to 6.

3. Date and Time of Planned Work	4. Name and phone Number of Firm	5. Work Location Address (Street Address, City, and State)

6. I, THE UNDERSIGNED, HEREBY CERTIFY THAT:

- A. All the information in this form is true and complete.
- B. I have read and understand the provisions of the general license in 10 CFR 150.20, and understand that I am required to comply with these provisions as well as all byproduct, source, or special nuclear material which I possess and use in areas under NRC jurisdiction under the general license for which this form is filed with the Nuclear Regulatory Commission.
- C. I understand that activities, including storage, conducted in areas under NRC jurisdiction under the general license in 10 CFR 150.20 are limited to 180 days in a calendar year.
- D. I understand that I may be inspected by the NRC at the above listed work site locations and at the licensee home office address for activities performed in areas under NRC jurisdiction. I am also aware that I am responsible for any fees associated with any inspections.
- E. I understand that conduct of any activities not described above, including conduct of activities on dates or locations different from those described above or without NRC authorization, may subject me to enforcement action, including civil or criminal penalties.

Certifying Officer, Name and Title

Signature

Date

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

JAMES L. SHELTON AND TESTCO, INC.

Docket No.(s) IA-95-055/150-00032-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (APPROVING SETTLEMENT) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board  
Mail Stop T-3 F 23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board  
Mail Stop T-3 F 23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Frank F. Hooper  
26993 McLaughli      ulevard  
Bonita Springs      33923

John T. Hull, Esq.  
Mitzi A. Young, Esq.  
Office of the General Counsel  
Mail Stop 0-15 B 18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

James L. Shelton  
Pres. & Radiation Safety Officer  
Testco, Inc.  
P.O. Box 18511  
Greensboro, NC 27417

Dated at Rockville, Md. this  
1 day of October 1996

  
Office of the Secretary of the Commission