



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

February 11, 1997

EA 97-037

Mr. Rodney D. Ballard, Vice President
Construction Testing & Engineering, Inc.
2414 Vineyard Ave, Suite G
Escondido, California 92029

SUBJECT: NRC INSPECTION REPORT 150-00004/96-17 AND NOTICE OF VIOLATION

Dear Mr. Ballard:

On January 27, 1997, the NRC completed an inspection of activities performed by Construction Testing & Engineering, Inc., (CTE) in areas of exclusive federal jurisdiction. The inspection included a review of pertinent records and discussions with CTE personnel at your Escondido, California, facility and review of documents provided to the inspector after the site visit. The inspection findings were discussed with you and members of your staff on December 11, 1996, at the conclusion of the site visit and during a telephonic exit briefing on January 27, 1997. The enclosed NRC Inspection Report 150-00004/96-17 presents the scope and results of this inspection.

Based on the results of this inspection, the NRC has determined that a violation of NRC requirements occurred. The violation involved a failure to provide hazmat training to employees who transported portable gauging devices on public highways as required by 49 CFR 172.700-704 and is cited in the enclosed Notice of Violation (Notice). You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In addition, two apparent violations were identified and are being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy). The apparent violations involved: (1) failure to obtain authorization under either a specific or general NRC license, as required by 10 CFR 30.3, prior to performing licensable activities in areas of exclusive federal jurisdiction from January through May 1996, and (2) failure to provide complete and accurate information regarding CTE's activities in areas of exclusive federal jurisdiction prior to June 1996 as required by 10 CFR 30.9. These apparent violations and the circumstances associated with them are described in the enclosed report. 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.

As discussed with you during the exit briefing, the apparent violation involving the failure to notify the NRC of activities performed in areas under its jurisdiction and to obtain the requisite authorization prior to performing such activities is of greater concern because a

Notice of Violation and Proposed Imposition of Civil Penalty was issued to CTE in March 1994 for a similar failure. Based on the findings of our inspection, it appears that corrective actions taken by CTE were not effective in preventing recurrence of this problem. You should be prepared to address this issue during the conference discussed below.

A predecisional enforcement conference to discuss these apparent violations has been scheduled for February 25, 1997, at 10 a.m., in the NRC Region IV Walnut Creek Field Office. The conference will be open to the public in accordance with the NRC Enforcement Policy (reference Federal Register Notice published on December 10, 1996, Vol. 61, No. 238). The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violations sooner, corrective actions, significance of the issues, and the need for lasting and effective corrective action. In addition, this is an opportunity for you to point out any errors in our inspection report and for you to provide any information concerning your perspectives on: 1) the severity of the apparent violations, 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. In presenting your corrective action, 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 the enclosed NRC Information Notice 96-28, "Suggested Guidance Relating To Development and Implementation of Corrective Action," may be helpful.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding these apparent violations is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, Enclosures 1, 2, and 5, and your response will be placed in the NRC Public Document Room (PDR).

Should you have any questions concerning this inspection, please contact Mr. Kent M. Prendergast at (510) 975-0255 or Ms. Linda Howell at (817) 860-8213.

Sincerely,



Ross A. Scarano, Director
Division of Nuclear Materials Safety

Docket No.: 150-00004
License No.: California 5309-80

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 150-00004/96-17
3. NRC Information Notice 96-28
4. NRC Enforcement Policy NUREG 1600
5. Predecisional Enforcement Conference Agenda

cc w/enclosures 1 & 2 only:

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