

July 6, 2010

EA-10-069

Christopher Genduso
Director of Operations
Laboratory Testing Services, LLC
36 River St.
Bridgeport, CT 06604

SUBJECT: NOTICE OF VIOLATION - NRC INSPECTION REPORT NO. 03037345/2010001

Dear Mr. Genduso:

This refers to the inspection conducted March 24-25, 2010 at the Laboratory Testing Services, LLC (LTS) facility in Bridgeport, Connecticut. The inspection consisted of an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and license conditions. Additional information regarding gauge leak test results, provided in your correspondence dated April 16, 2010, was discussed during a telephone conversation on the same date between you and Mr. C. Gordon of this office, and was also examined as a part of the inspection. During the inspection, three apparent violations were identified. The apparent violations were discussed with you during an exit meeting on April 16, 2010, and are identified in the inspection report transmitted to you in the NRC letter dated May 12, 2010.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated May 21, 2010, you provided a response to the apparent violations, wherein you agreed these violations occurred as stated in the inspection report, and you provided additional information about the causes of, and corrective actions for, the apparent violations.

Based on the information developed during the inspection and the information that you provided in your May 21, 2010 response, the NRC has determined that three violations of NRC requirements occurred. The violations involved the failures to: (1) confine possession and use of byproduct material to the location authorized by the license, as required by 10 CFR 30.34(c); (2) have an individual named on the license as a Radiation Safety Officer (RSO), as required by Condition 12 of the license; and, (3) obtain written consent from the NRC before transferring ownership of LTS to HAKS Material Testing Company (HAKS). The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The violations were significant because: (1) the NRC was not informed of LTS' new location, and therefore, may not have been able to locate the licensee if necessary, and did not confirm, from its review of gauge leak test results, that no contamination from the licensed material remained in the authorized location prior to LTS changing locations; (2) the NRC was unable to confirm the acceptability of the transfer of the licensed material to HAKS before it occurred; and,

(3) the individual performing oversight of the radiation safety program, while a qualified authorized user, was not fully qualified to respond to an emergency event involving a damaged gauge, and LTS had relied on the former RSO for maintenance and implementation of the program. These violations share a common root cause of LTS not retaining a qualified RSO to implement the radiation safety program or having an individual knowledgeable of specific NRC requirements regarding transfer of licensed material. Therefore, the NRC has decided, in accordance with the NRC Enforcement Policy, to categorize these violations collectively as a Severity Level (SL) III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement actions within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit is warranted for corrective actions, because your corrective action was considered prompt and comprehensive. The corrective actions consisted of your amendment request, dated February 26, 2010, to add the new facility location to the LTS license, and the request to terminate the LTS license, subsequent to satisfying the license requirements for HAKS (a new license was issued to HAKS on April 9, 2010).

Therefore, to encourage prompt 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, any similar violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03037345/2010001, your May 21, 2010 letter, and in this NRC letter. 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 and its Enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, 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 financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html>.

Sincerely,

/RA/

Marc L. Dapas
Acting Regional Administrator

Docket No. 03037345
License No. 06-31191-01

Enclosure: Notice of Violation

cc: State of Connecticut

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 financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html>.

Sincerely,

/RA/

Marc L. Dapas,
Acting Regional Administrator

Docket No. 03037345
License No. 06-31191-01

Enclosure: Notice of Violation

cc: State of Connecticut

Distribution: see next page

SUNSI Review Complete: AEP (Reviewer's Initials)

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\Lab Test Serv SLIII NOV.doc

After declaring this document "An Official Agency Record" it **will be** released to the Public. ADAMS Accession No.: ML101880064

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" =No copy

OFFICE	RI/ORA		RI/DNMS		RI/DNMS		RI/ORA		RI/ORA	
NAME	ADeFrancisco		MMiller		JKinneman MM for		KFarrar		DHolody	
DATE	6 / 17 /2010		6/ 18 /2010		6 /18 /2010		6/ 21 /2010		6 / 22 /2010	
OFFICE	HQ/OE		RI/ORA							
NAME	LSreenivas/via email		MDapas							
DATE	06/ 30 /2010		07/06/2010							

* See concurrence on previous page OFFICIAL RECORD COPY

Distribution w/encl:

ADAMS (PARS)

SECY

CA

OEMAIL

OEWEB

WBorchardt, EDO

MVirgilio, DEDMRT

LTrocine OEDO

MWeber, EDO

RZimmerman, OE

ACampbell, OE

NHilton, OE

LSreenivas, OE

LLopez, OE

NHasan, OE

CScott, OGC

CMiller, FSME

CCarpenter, FSME

RLewis, FSME

JLuehman, FSME

MBurgess, FSME

GVillamar, FSME

DWhite, FSME

Enforcement Coordinators

RII, RIII, RIV (C Evans; S Orth; W Jones)

EHayden, OPA

HBell, OIG

CMcCrary, OI

STitherington-Buda, OCFO

MWilliams, OCFO

SCollins, RA, RI

MDapas, DRA, RI

DScrenci, PAO-RI / NSheehan, PAO-RI

JKinneman, DNMS, RI

PHenderson, DNMS, RI

MFerdas, DNMS, RI

PLanzisera, DNMS, RI

DJanda, SAO-RI / J Kottan, SAO-RI

KFarrar, RI

DHolody, RI

MMcLaughlin, RI

ADeFrancisco, RI

CODaniell, RI

SVillar, RI

R1DNMSMailResource

NOTICE OF VIOLATION

Laboratory Testing Services, LLC (LTS)
Bridgeport, CT

Docket No. 03037345
License No. 06-31191-01
EA-10-069

During an NRC inspection conducted March 24-25, 2010, for which an exit meeting was held on April 16, 2010, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(c) requires, in part, that each licensee confine its possession and use of byproduct material to the locations and purposes authorized by the license.

Contrary to the above, on March 24, 2010, the licensee did not confine its possession and use of byproduct material to the location authorized by the license. Specifically, the licensee possessed and used portable gauges at 36 River Road, Bridgeport, Connecticut, a location not authorized by the license.

- B. 10 CFR 30.34(b) requires, in part, that no license shall be transferred, assigned, or disposed of, through transfer of control of any license to any person, unless the Commission shall give its consent in writing.

Contrary to the above, on January 14, 2010, Laboratory Testing Services, LLC transferred ownership control of the license to HAKS Material Testing Company without the Commission's written consent.

- C. Condition 12 of License No. 06-31191-01 specifies a particular individual as the Radiation Safety Officer (RSO).

Contrary to the above, the RSO named in Condition 12 of License No. 06-31191-01 left the company in June 2008, and the licensee failed to have an RSO approved by the NRC.

These three violations have been categorized collectively as a Severity Level III problem. (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. 03037345/2010001, a letter from the licensee dated May 21, 2010, and in the letter transmitting this Notice of Violation (Notice). However, LTS is 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-10-069," 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 I, 475 Allendale Rd., King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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.

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

Dated this 6th day of July 2010