

[Docket No. 030-20836 License No. 25-21479-01 EA 95-063]

Mattingly Testing Services, Inc. Great Falls, Montana; Order Modifying License (Effective Immediately)

Mattingly Testing Services, Inc., (MTS or Licensee) is the holder of Byproduct Material License No. 25-21479-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. The license authorizes the licensee to possess and utilize sealed sources of byproduct material in various radiographic exposure devices for the purpose of conducting industrial radiography. The license was due to expire on August 31, 1994, but has remained in effect based on the licensee's timely submission of a renewal application dated July 28, 1994.

II

From January 4 to January 24, 1995, an NRC inspection and NRC investigation were conducted to determine compliance with radiation safety requirements and to determine whether licensee officials and employees had deliberately violated certain NRC requirements. As described in detail in NRC Inspection Report No. 030-20836/95-01, issued on February 28, 1995, the NRC staff found that MTS radiography personnel had violated a significant number of NRC requirements when performing radiography on a pipeline near Miles City, Montana. The inspection and preliminary investigation found, in part, that some of the violations were deliberate in that the President/Radiation Safety Officer and the Vice President/Assistant Radiation Safety Officer, knew that MTS personnel were violating NRC requirements and expressed the belief that work could be performed safely under the circumstances without meeting these requirements. The deliberate violations included, in part, not performing surveys as prescribed by 10 CFR 34.43(b), not posting radiography areas as required by 10 CFR 34.43, and not securing sealed sources in radiographic exposure devices as required by 10 CFR 34.22(a).

Further, the inspection and investigation found that MTS management deliberately allowed a newly hired assistant radiographer to begin working without meeting all of the NRC's training requirements in violation of 10 CFR 34.31(b), that an MTS radiographer had deliberately failed to supervise this assistant radiographer during radiography operations as required by 10 CFR 34.44, that MTS management had deliberately

not completed all field audits of radiography personnel as required by 10 CFR 34.11(d)(1), and that MTS management had deliberately failed to amend its NRC license to reflect the establishment of a new office and storage location for NRC-licensed material in Billings, Montana as required by License Condition 17. These and other violations of NRC requirements, which were the subject of a March 7, 1995 transcribed enforcement conference at which MTS's President and Vice President admitted to the deliberate nature of the violations, are described in a Notice of Violation and Proposed Imposition of Civil Penalties-\$15,500 issued concurrently with this Order.

Based on the above, it appears that the Licensee has willfully violated NRC requirements. The NRC cannot tolerate a situation in which a licensee elects to violate requirements that are designed to assure the safety of both radiography personnel and unsuspecting members of the public. Collectively, these violations amount to a breakdown in the control of licensed activities and also demonstrate a lack of effective oversight of radiographic operations by the radiation safety officer and his assistant, all of which is made more significant by the deliberate nature of many of the violations.

Consequently, without additional actions to monitor the performance of the Licensee, I lack the requisite reasonable assurance that the Licensee's current and future operations under License No. 25-21479-01 will be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety and interest require that License No. 25-21479-01 be modified to require that MTS retain the services of an independent auditor to conduct an initial audit of MTS's radiation safety program and to conduct semiannual audits for two years following the initial audit. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, it is hereby ordered, effective immediately, that license no. 25-21479-01 is modified as follows:

A. The Licensee shall retain the services of an independent individual or organization (consultant) to perform an initial assessment of the Licensee's radiation safety program and semiannual audits thereafter for a period of two years from the date of the initial audit such that a total of five (5) audits will be conducted.

B. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region IV, for NRC review and approval, the name and qualifications of the consultant it proposes to use in conducting these audits and the general audit plan that complies with requirements set forth in Paragraphs IV.C, IV.D and IV.E. The consultant shall be independent of the Licensee's organization and shall be experienced, or qualified, in evaluating the effectiveness of the management and implementation of a radiation safety program for radiographic operations.

C. Within 60 days of the date of NRC's approval of a consultant, the Licensee shall submit to the NRC Regional Administrator, Region IV, the results of the consultant's initial assessment. Thereafter, the Licensee shall assure that the consultant performs four (4) semiannual audits to be completed approximately every six months from the completion date of the initial audit. The Licensee shall submit the results of the four semiannual audits within 30 days of the date they are provided to the Licensee in writing. With the submission of each audit report, the Licensee shall describe any corrective actions it is taking in response to audit findings or recommendations.

D. The initial audit shall: (1) Evaluate the effectiveness of the Licensee's management system for assuring compliance with all NRC requirements, including the adequacy of the Licensee's program for training radiography personnel and the adequacy of its radiography procedures; (2) evaluate the adequacy of the Licensee's corrective actions for the violations that were identified by the NRC in the Notice of Violation issued concurrently with this Order; (3) make recommendations as necessary for improvements in management oversight of licensed activities or corrective actions to comply with NRC requirements; and (4) include unannounced field audits (i.e., observe radiography operations) of at least 50 percent of Licensee personnel who are authorized at the time of the audit to be performing radiography, including personnel from both the Great Falls and Billings offices.

E. At a minimum, each subsequent semiannual audit shall:

1. Assess the effectiveness of the Licensee's corrective actions for previous audit findings as well as any violations identified by the NRC in subsequent inspections;

2. Assess the overall effectiveness of the Licensee's management oversight of licensed activities to assure compliance with all NRC requirements;

3. Make recommendations as necessary for improvements in management oversight or corrective actions to restore compliance with NRC requirements; and

4. Perform unannounced field audits of at least 50 percent of the radiography personnel authorized to perform radiography at the time of the audit, including some personnel from both the Great Falls and Billings offices.

The Regional Administrator, Region IV, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath of affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies of hearing request also should be sent to the Director, Office of the Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularly the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held,

the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 5th day of May 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35689; File No. SR-Amex-95-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Minimum Fractions of Trading in Standard & Poor's MidCap 400 Depositary Receipts

May 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 3, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Rule 127, Commentary .01 to provide that the minimum fractional change applicable to trading of Standard & Poor's MidCap 400 Depositary Receipts ("MidCap SPDRs") shall be 1/64 of \$1.00.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Amex Rule 127 provides parameters for the minimum fractional change for dealings in securities on the Exchange. Commentary .01 to Rule 127 provides that for securities listed under Amex Rule 1000 *et seq.*, which relate to Portfolio Depositary Receipts ("PDRs"), the minimum fractional change shall be 1/32 of \$1.00. Since April 1994, Standard and Poor's Depositary Receipts ("SPDRs"), which have been trading on the Exchange since January 1993, have had a minimum fractional change of 1/64 of \$1.00.²

In initially approving trading of PDRs in 1/32's, the Commission stated that such trading would enhance market liquidity and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also noted that such trading should allow customers to receive the best possible execution of their transactions in these securities.³

The Commission has approved Exchange listing and trading of S&P MidCap 400 Depositary Receipts with a minimum fractional change of 1/32 of \$1.00.⁴ The Exchange, however,

² Securities Exchange Act Release No. 33900 (April 12, 1994), 59 FR 18585. SPDRs are PDRs based on the S&P 500 Composite Stock Price Index.

³ Securities Exchange Act Release No. 31794 (January 29, 1993), 58 FR 7272.

⁴ Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686.