

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION****Sunshine Act Meeting**

June 10, 2002.

*Time and Date:* 10:00 a.m., Wednesday, June 19, 2002.

*Place:* Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

*Status:* Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

*Matters To Be Considered:* It was determined by a majority vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Douglas R. Rushford Trucking*, Docket No. YORK 99-39-M (Issues include whether the judge erred by failing to follow the Commission's remand instructions in assessing a penalty).

Any person attending the open portion of the meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

*Contact Person for More Information:* Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 150-00004, General License /10 CFR 150.20, EA-01-271]

**Decisive Testing, Inc., San Diego, California; Order Imposing Civil Monetary Penalty****I**

Decisive Testing, Inc. (Licensee) is the holder of California Radioactive Material License No. 1836-37, which authorizes the Licensee to use sealed sources containing byproduct material to conduct industrial radiography. California is an Agreement State as defined by 10 CFR 150.3(b) of the NRC's regulations. Pursuant to 10 CFR 150.20 of the NRC's regulations, the Licensee is granted a general license to conduct the same activity in areas of exclusive Federal jurisdiction provided the requirements of 10 CFR 150.20(b) have been met.

**II**

An inspection and an investigation of the Licensee's activities were completed in September 2001. The results of the inspection and the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 27, 2002. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated March 21, 2002. In its response, the Licensee admitted the violation, but requested that discretion be exercised and that no civil penalty be assessed.

**III**

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that violations cited in the Notice were willful, and that the civil penalty proposed for the violations should be imposed.

**IV**

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$6,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission,

ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated this 11th day of June 2002.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

**Appendix to Order Imposing Civil Penalty****NRC Evaluation and Conclusion of Licensee's Request for Mitigation of Civil Penalty**

On February 27, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection and investigation. Decisive Testing, Inc. (DTI or Licensee) responded to the Notice on March 21, 2002. The Licensee admitted the violation, but requested that discretion be exercised and no civil penalty assessed. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

*Summary of Licensee's Request for Mitigation*

DTI admitted the violation, but requested that discretion be exercised and that no civil penalty be assessed. DTI based this request on its statement that there was no threat to public health, that the situation was corrected before the NRC became involved, and that management had no reason to suspect that a responsible employee would schedule covered work without first making certain the reciprocity form was filed and the fee paid. DTI suggested that a violation such as this with a very low safety significance might best be addressed by a letter of reprimand. DTI also stated that the violation does not fit neatly into Table 1A of the NRC Enforcement Policy, arguing that Decisive Testing is not the equivalent of the other facilities listed in the same category, and that