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NRC PROPOSES \$10,000 FINE AGAINST MATTINGLY FOR FIRING WHISTLEBLOWER

The Nuclear Regulatory Commission staff has proposed a \$10,000 fine against Mattingly Testing Services Inc. of Great Falls, Montana, for firing a radiographer who had reported safety violations to the NRC.

Mattingly Testing, a small company licensed by the NRC to perform radiography, dismissed the employee in April 1995 after he reported to the NRC that Mattingly Testing had violated a number of NRC requirements governing the use of radiographic cameras. The cameras use sealed radioactive sources to detect flaws in metals and other materials.

An NRC inspection substantiated the employee's allegations. The agency cited Mattingly Testing for significant violations, including allowing inadequately trained employees to work in radiography and failure to properly secure radiographic cameras, and fined it \$15,500 in May 1995. An order was also issued requiring Mattingly to have periodic audits performed by an independent auditor.

After his dismissal, the individual charged that Mattingly Testing had fired him in retaliation for raising safety concerns. Under federal law and NRC requirements, employees who raise safety concerns are protected from discrimination by their employers.

His claims were heard before a U.S. Department of Labor administrative law judge and were investigated by the NRC's Office of Investigations. In March 1997, the administrative law judge concluded that Mattingly Testing discriminated against the employee when it fired him, reversing an earlier decision in favor of Mattingly Testing.

The NRC Office of Investigations reached the same conclusion in an inquiry concluded on April 16, 1997. On April 18, a Department of Labor Administrative Review Board approved a settlement between Mattingly Testing and the individual, thus ending the Department of Labor proceedings prior to its reaching a final decision.

During Department of Labor proceedings and a conference with NRC staff,

Mattingly Testing said that it had fired the individual because he had performed a poor inspection and had missed a significant number of welding defects on girders intended for use on a bridge project.

In a letter to Mattingly Testing, NRC Region IV Regional Administrator Ellis W. Merschoff said, ``Notwithstanding this argument, the NRC has determined that (Mattingly Testing) has not shown that it would have terminated the former employee solely for having conducted a poor inspection, absent his having brought safety concerns to the NRC.”

The NRC categorized the violation as Severity Level III under its four-level enforcement system. Level IV is the least serious. The NRC doubled the fine from the base minimum of \$5,000 because Mattingly Testing did not identify the violation, and because it has not provided to NRC information on specific actions it has taken to ensure that the individual’s firing does not have a chilling effect on other employees raising safety concerns to NRC.

Mattingly Testing has 30 days to pay the fine or file a protest. If the protest is denied, the company may request a hearing.

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