

September 15, 2008

EA-08-158

John E. Sisson
President
Quality Inspection Services, Inc.
Cathedral Park Tower
37 Franklin St., Suite 400
Buffalo, NY 14202

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$ 6,500 (NRC INSPECTION REPORT NO. 03033722/2007001 AND OFFICE OF INVESTIGATIONS (OI) INVESTIGATION REPORT NO. 1-2007-023); AND, CLOSURE OF CONFIRMATORY ACTION LETTER 1-07-003

Dear Mr. Sisson:

This refers to the inspection conducted on March 13-14, 2007 at the Quality Inspection Services, Inc. (QISI) facility in Manchester, Connecticut. The purpose of the inspection was to evaluate final preparation of the permanent radiographic installation, in anticipation of QISI's request for NRC approval for use of the permanent facility for radiography. During the inspection, the NRC determined that exposures were conducted at the Manchester facility prior to NRC approval and were not conducted in accordance with the NRC regulations for a temporary job site, as authorized by your NRC license. As a result, the NRC issued Confirmatory Action Letter (CAL) 1-07-003, dated March 28, 2007, which documented QISI's commitments to: (1) not conduct radiographic operations in the proposed permanent radiographic installation until authorized by the NRC; (2) promptly transfer the radiography device to a licensed facility in New York authorized to receive it; (3) develop and implement an investigation plan to determine the circumstances of the unauthorized use of the proposed permanent radiographic installation; and, (4) develop and implement a corrective action plan to ensure all NRC requirements were met prior to conducting radiographic activities at the Manchester facility.

Subsequent to the NRC onsite inspection, the NRC Office of Investigations (OI) initiated an investigation at the Manchester facility to determine whether: (1) QISI willfully performed unauthorized radiography operations; and, (2) QISI personnel willfully provided incomplete and inaccurate information to the NRC during the site inspection on March 13, 2007. Based on the evidence obtained during the inspection, and investigation which was completed on November 30, 2007, the NRC identified apparent violations that were discussed with you during an exit meeting conducted by telephone on July 21, 2008, and documented in the letter enclosing the inspection report and a factual summary of the OI investigation sent to you on August 15, 2008.

On August 27, 2008, a predecisional enforcement conference (PEC) was conducted in the NRC Region I office, with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. After considering the information developed

during the inspection, the investigation, and the information that you provided during the PEC, the NRC has determined that four violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding the violations are described in detail in the subject inspection report and OI factual summary.

The first violation, which is described in Section I of the attached Notice, involves QISI's willful failure to maintain utilization logs, showing for each sealed source: (1) a description of the radiographic exposure device or transport or storage container in which the sealed source is located; (2) the identity and signature of the assigned radiographer; and, (3) the plant or site where the source was used, and when, including the dates on which the source was removed and returned to storage. Specifically, between November 15, 2006 and March 2, 2007, the QISI site radiation safety officer (RSO) performed radiographic operations for which he did not maintain utilization logs. The NRC concluded that the RSO's actions were willful, in careless disregard of NRC requirements. Willful violations are of particular concern to the NRC, because its regulatory program is based on licensees and their employees acting with integrity. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$6,500 is considered for a SL III violation. Because this violation was willful, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is not warranted because the violation was identified by the NRC. Credit for corrective action is warranted, however, because the NRC found that QISI's actions were prompt and comprehensive. These actions included: (1) transfer of the radiography device to an authorized QISI facility; (2) ceasing use of the proposed permanent cell until approved by the NRC; (3) removing the site RSO from radiography activities and hiring a new site RSO as a replacement; (4) discontinuing assignment of RSO and operations manager duties to a single individual; and (5) ensuring that employees involved in radiography activities have reviewed QISI's Operations and Emergency (O & E) Manual.

Therefore, to emphasize the importance of compliance with regulations and of prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$6,500 for this Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

Three other violations are described in Section II of the Notice. Two of these violations involve the failures to: (1) provide to the NRC, and maintain, complete and accurate information regarding the use of the proposed permanent fixed installation in the Manchester facility; and, (2) obtain NRC approval prior to conduct of radiographic operations at the Manchester permanent radiographic installation. These violations are of concern to the NRC because there was the potential for unnecessary radiation exposure to workers while using the unapproved permanent fixed installation, particularly on March 2, 2007, when a radiography exposure evolution was performed for a period of several hours without interruption. These violations, in addition to the violation related to maintaining utilization logs, were caused by the failure of licensee officials to ensure that QISI employees adhered to NRC requirements while conducting radiography for the purposes of maintaining business operations. During the PEC, QISI staff noted that a contributing factor to the cause of the violation was that the site RSO, who was

responsible for maintaining operations management and the radiation safety program for the Manchester facility during a change in the location of the facility, did not properly fulfill his responsibilities.

The third violation described in Section II involves the failure of the Corporate Radiation Safety Officer (CRSO) to establish a temporary jobsite during test exposures at the Manchester facility's proposed permanent installation. This violation is of concern to the NRC because there was only one individual in the area during the exposure, instead of the two qualified individuals required for a temporary jobsite.

Each of the three violations in Section II of the Notice has been categorized at SL III. A base civil penalty in the amount of \$6,500 is considered for SL III violations. Because these violations were not considered willful, and because you have not been subject to escalated enforcement action in the past two years or past 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 for corrective action is warranted because the NRC determined that QISI's actions in response to each of the violations, were prompt and comprehensive. These actions included: (1) providing annual refresher training to QISI employees that includes a discussion of the requirement to provide complete and accurate information to the NRC; (2) discussing the requirement to provide complete and accurate information to the NRC as part of the 8-hour initial radiation program training administered to new employees; (3) ensuring that employees involved in radiography activities have reviewed QISI's O & E Manual; (4) ensuring the CRSO understands the NRC requirements for taking radiation measurements at a permanent fixed installation before it is approved; and, (5) reinforcing expectations regarding the existing Employee Concerns Program, specifically emphasizing the opportunity for employees to raise safety concerns.

Therefore, to emphasize the importance of compliance with regulations and of prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to not impose a civil penalty for the SLIII violations described in Section II of the Notice.

Pursuant to 10 CFR 2.201, you are required to provide a response to the enclosed Notice and Proposed Imposition of Civil Penalty identifying whether you admit or deny the violations, as well as to provide appropriate payment of the Civil Penalty. Please follow the instructions in the attached Notice when preparing your response. Your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). To the extent possible, your response 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 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 this letter, in

Inspection Report No. 03033722/2007001, and in your letter dated April 30, 2007 in response to our March 28, 2007 CAL. Therefore, you are not required to provide that information in your response, unless the descriptions in the aforementioned correspondence do not accurately reflect your position.

Alternatively, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any issues you have with this proposed action. If you request ADR, you will need to contact the Institute on Conflict Resolution (ICR) at 877-733-9415 within 10 days of the date of this letter. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning NRC's program is described in the brochure (NUREG/BR-0317) that is attached to this letter, and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The ICR at Cornell University has agreed to facilitate the NRC's program as an intake neutral.

In addition, based on your corrective actions, as described in the aforementioned documents, the NRC has concluded that the terms of CAL 1-07-003 have been met.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and 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>. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/ Original Signed by Marc L. Dapas for

Samuel J. Collins,
Regional Administrator

Docket No. 03033722
License No. 31-30187-01

Enclosure: 1. Notice of Violation and Proposed Imposition of Civil Penalty
 2. NUREG/BR-0254 Payment Methods
 3. NUREG/BR-0317 Post-Investigation ADR Program

cc w/ Enclosure 1 only:
D Miskell, Radiation Safety Officer
State of New York
State of Connecticut

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cc w/ Enclosure 1 only:
 D Miskell, Radiation Safety Officer
 State of New York
 State of Connecticut

SUNSI Review Complete: jdk (Reviewer's Initials)

DOCUMENT NAME: QISI NOV CP CG REV.doc ADAMS Accession No.: ML082610446

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*see previous concurrence page **concurrence via email from L.Sreenivas

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Quality Inspection Services, Inc.
Manchester, Connecticut

Docket No. 03033722
License No. 31-30187-01
EA-08-158

During an NRC inspection which concluded on July 21, 2008, and an investigation completed on November 30, 2007, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. VIOLATION ASSESSED A CIVIL PENALTY

10 CFR 34.71 requires, in part, that each licensee shall maintain utilization logs showing, for each sealed source, the following information: a description, including the make, model, and serial number of the radiographic exposure device or transport or storage container in which the sealed source is located; the identity and signature of the radiographer to whom assigned; and the plant or site where used and dates of use, including the dates removed and returned to storage.

Contrary to the above, between November 15, 2006 and March 2, 2007, the licensee's radiation safety officer (RSO) performed radiographic operations at the Manchester, Connecticut site, without maintaining utilization logs.

This is a Severity Level III violation (Supplement VI)
Civil Penalty - \$ 6,500. (EA-08-158)

II. VIOLATIONS NOT ASSESSED A CIVIL PENALTY

A. 10 CFR 30.9 requires, in part, that information provided to the NRC by a licensee shall be complete and accurate in all material respects.

Contrary to the above, Quality Inspection Services, Inc. (QISI) provided information to the NRC on two occasions that was not complete and accurate in all material respects. Specifically, when the site RSO was questioned by the NRC on March 13, 2007, regarding the number of exposures performed in the fixed radiography cell at the Manchester facility, the site RSO stated that the source had not been used since October 2006, even though he had used the cell for radiography on at least four occasions during that time. In addition, an assistant radiographer provided inaccurate information to the NRC on April 5, 2007, when questioned about the number of exposures taken in 2006 and 2007. The assistant radiographer did not provide information concerning exposures that he participated in during October 2006 and January 2007, although OI obtained evidence that these exposures had occurred.

This is a Severity Level III violation (Supplement VII).

- B. 10 CFR 34.41(b) requires, in part, that all radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation unless specifically authorized by the NRC.

Contrary to the above, on seven occasions between October 2006 and March 2007, QISI used the facility located in Manchester, Connecticut as a permanent radiographic installation to conduct radiographic operations without specific authorization by the NRC. In addition, on two of these occasions (December 20, 2006 and January 26, 2007), the operations were conducted prior to QISI's final radiation surveys of the cell, which were used to determine whether radiation levels in unrestricted areas met NRC public exposure limits.

This is a Severity Level III violation (Supplement VI).

- C. 10 CFR 34.41(a) requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer.

Contrary to the above, on February 7, 2007, the QISI Corporate RSO performed radiographic operations in the proposed permanent radiographic installation and the Corporate RSO was not accompanied by at least one other qualified radiographer.

This is a Severity Level III violation (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 the letter transmitting this Notice, in Inspection Report No. 030337221/2007001, and in your letter dated April 30, 2007. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation under 10 CFR 2.201. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation (EA-08-158)," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

The licensee may pay the civil penalty proposed above by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-08-158)" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or, (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth

separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Alternatively, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any issues you have with this proposed action. If you request ADR, you will need to contact the Institute on Conflict Resolution (ICR) at 877-733-9415 within 10 days of the date of this letter. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning NRC's program is described in the brochure (NUREG/BR-0317) that is attached to the letter transmitting this Notice, and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The ICR at Cornell University has agreed to facilitate the NRC's program as an intake neutral.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

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)]. To the extent possible, your response should not include any personal privacy, proprietary information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 15th day of September 2008.