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A PROFESSIONAL CORPORATION

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June 26, 2001

J. Bradley Fewell, Esquire
Regional Counsel
Nuclear Regulatory Commission
Region I Office
475 Allendale Road
King of Prussia, PA 19406-1415

VIA TELECOPY (610) 337-5241

Re: Response (in opposition) to an Apparent Violation
NRC Office of Investigations Report No. 1-1997-050

Dear Mr. Fewell:

This letter is a follow-up to our recent telephone conversations, in connection with the above-referenced matter. The NRC indicates that two (2) apparent violations have been identified and are being considered for escalated enforcement, in a letter dated April 16, 2001 from George Pangburn, Director of Division of Nuclear Material Safety, addressed to our clients, Craig P. Sanford, individually and as President of SMI East Coast Medical Waste, Inc. ("SMI") (which letter refers to SMI as non-licensee EA No. 01-064). First, the NRC claims that SMI violated 10 C.F.R. §30.3, based upon SMI's possession, receipt and transfer of one or more barrels which contained tritium and/or tritium contaminated objects. Second, the NRC claims that SMI "apparently deliberately provided false information to the NRC during the investigation, which are apparent violations of 10 C.F.R. §30.10. Mr. Pangburn's letter indicated that the alleged violations may be categorized as severity level III and may result in the proposal of a Notice of Violation, a Civil Penalty, or an Order, or some combination thereof. Our clients, SMI and Mr. Sanford dispute that they are guilty of any violations.

This potential enforcement action stems out of "a tritium contamination event on October 29, 1997", at the Arthur Brisbane Child Treatment Center, in Farmingdale, New Jersey. It is our understanding that tritium is the same material that is found in wrist watches that glow in the dark, etc. It is our further understanding that the material at issue in this action is low level tritium (H 3) contaminated material. More specifically, the

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REGION I

NMSS/RGNI MATERIALS-004

Lightman, Manochi & Christensen

J. Bradley Fewell, Esquire
Regional Counsel
June 26, 2001
Page -2-

Summary of Findings of OI Report 1-1997-050 (the "OI Report") states that on "December 4, 1997, SMI removed one barrel of radioactive material from Brisbane which contained approximately 12 curies of tritium from a broken generally licensed exit sign and stored that barrel and the contents at its Morrisville, Pennsylvania facility to await disposal... [and that t]his facility was not licensed to receive or store radioactive material."

In the first instance, we bring to your attention that the report from a physicist (the report dated December 1, 1997, from Dr. Theodore E. Rahon, Ph.D, CHP. of CoPhysics Corporation, to Mr. Robert Bellan, Chief, Bureau of Environmental/Safety Compliance, New Jersey Department of Human Resources (the "CoPhysics Report")) states that 98% of the radioactivity contained in the one tube of tritium in the exit sign, escaped and was released into the atmosphere as elemental tritium (hydrogen) gas, when the person (not SMI) dropped it and broke the sign and one tube of tritium. That incident was prior to our client's involvement in this matter. The CoPhysics Report goes on to state:

"Approximately 2% of the tritium in each tube is not in the gaseous form and thus remains on the broken glass and other sign parts after a tube breakage. For each tube broken, there would be approximately 70,000 Uci remaining on the broken pieces."

CoPhysics Report, at p.2. For your convenience, we are enclosing a copy of the CoPhysics Report with this letter.

SMI and Mr. Sanford dispute that they violated 10 C.F.R. 30.3 in the removal of this barrel, or in the disposition of the other barrels (which we understand contained carpeting, furniture, televisions and personal items from the hospital room). SMI, through Mr. Sanford as President, profiled the waste, and made inquiry as to SMI's usual incineration facility (where medical waste is shipped by SMI during the normal course of business) as to the safety and limits of tritium that could be accepted by that facility. With respect to the broken sign, SMI contacted the Isolite Corporation and obtained instructions from them for the transfer of the broken sign to them. At all times, the NRC was apprised by SMI of what steps SMI was taking to dispose of the exit signs, including the one exit sign which was broken and contained a broken tube of tritium with trace amounts (less than 70,000 Uci) of tritium.

Lightman, Manochi & Christensen

J. Bradley Fewell, Esquire
Regional Counsel
June 26, 2001
Page -3-

Our client first became involved in the removal process when SMI was contacted by Robert Bellam, from the State of New Jersey, Brisbane Child Treatment Center, and requested that SMI remove the waste. At all times, SMI, the President, Mr. Sanford, followed existing protocols and regulations, in disposing of the drums (including the one drum which contained the broken exit sign).

SMI believes and respectfully submits that it did nothing wrong, and disposed of the exit sign and the drums in the normal course, pursuant to existing regulations. We request that you check with some of your own inspectors, such as Steven R. Courtemanche, the Health Physiologist present at the site, to confirm that all actions SMI took were proper.

If the nature of the proposed violation is to cite SMI because the drum containing the broken sign of tritium was first transported by SMI to its facility, and then the sign repacked and sent to Isolite Corporation, then we respectfully submit that you must serve a notice of violation upon the U.S. Postal Service (the "USPS"), as well as Federal Express, and UPS and other carriers, who normally deal with such material on a recurring basis, which material is transferred through their facilities when shipped through the mails. SMI did nothing more or nothing different than any of those recognized national carriers. Further, SMI was acting pursuant to the instructions SMI received from Isolite Corporation. It is simply unfair, and we submit discriminatory and improper, for the NRC to cite SMI for the manner in which it handled the broken exit sign, when the USPS, Federal Express, etc. also handle those materials on a repeated basis in a similar fashion, and they similarly are not cited for any violations.

SMI disposed of the broken exit sign in accordance with the instructions it received from Isolite Corporation. We are enclosing with this letter a copy of those instructions which Isolite supplied to SMI. Further, SMI checked with NRC representatives to confirm that such disposal procedure was acceptable to the NRC.

As to the barrels that contained tritium contaminated objects that were shipped to Safety Disposal Systems, Inc. ("SDSI"), again SMI confirmed with SDSI that it was authorized to receive that material. Also, SMI also confirmed with NRC representatives that such disposal was acceptable to the NRC.

With respect to the NRC's claims that Mr. Sanford in his capacity as President of SMI made false statements to the NRC during the investigation regarding invoices and consultation with

Lightman, Manochi & Christensen

J. Bradley Fewell, Esquire
Regional Counsel
June 26, 2001
Page -4-

an expert in the area of radioactive waste, our clients vehemently dispute such allegations. Mr. Sanford advised OI that he had provided copies of all information in his files to the NRC, and in fact, such statement was true. The NRC claims that an invoice dated December 4, 1997 (that identified the broken exit sign) was sent to NJDEP but not to OI). That simply is not true, and can be confirmed through Mr. Mike Anderson. Mr. Sanford categorically denies that he stated to anyone that such invoice was not an official document or that such invoice did not really exist. That simply is not true--those statements were not made by Mr. Sanford.

The NRC also contends that Mr. Sanford stated that he made the decision to dispose of the radioactive material as medical waste only after he had consulted with his expert in the field, and that such statement was false (because the NRC claims that the individual in question denies providing advice that the waste could be disposed of as medical waste, and the individual states that he was not contacted, by Mr. Sanford, until after the shipment arrived at the disposal destination in South Carolina). Again, those allegations are not true and/or are premised upon incorrect facts. In the first instance, the manifests clearly state that the material being disposed of is tritium contaminated. We are enclosing with this letter a copy of the tritium contaminated manifest, as well as a copy of the Bill of Lading to Isolite (which identifies the material shipped as "1 broken exit sign, containing tritium (H3)"). Thus, contrary to the NRC's assertions, the material was not disposed of as medical waste, but as tritium contaminated material.

Mr. Sanford did in fact consult with several individuals whom he considered experts in the field of radioactive material, including, without limitation: Isolite (Rick Renci); Larry Ayers from MSI; Chip Prister from Safety Disposal. Moreover, Mr. Sanford was in constant communication with NRC representatives regarding his proposed disposition procedures, including without limitation: Judith A. Joustra, Sr. Health Physicist. Thus, Mr. Sanford disputes that he made any false statement to the NRC regarding the disposal of any of the tritium, or that SMI disposed of the waste as medical waste instead of as radioactive waste.

We respectfully submit that the actions of SMI and Craig Sanford as President were not in any manner improper or in violation of NRC regulations or applicable law regarding the disposition of the tritium radioactive waste. We respectfully submit that it would be discriminatory and unfair for the NRC to take enforcement action against SMI, while other carriers (such as the USPS, Federal Express, etc.) utilize the same procedures SMI

Lightman, Manochi & Christensen

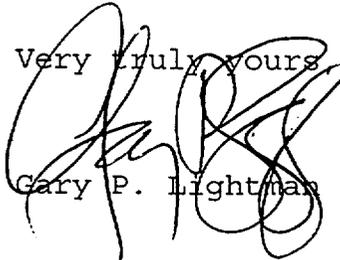
J. Bradley Fewell, Esquire
Regional Counsel
June 26, 2001
Page -5-

employed to dispose of the broken sign. This is especially so where, to our knowledge, the USPS, Federal Express, etc. have the same status as SMI (i.e. none of those entities are licensed as facilities to receive or store radioactive material). We respectfully submit that SMI should not be made a scape-goat to bear any responsibility in this matter, especially when its actions were proper.

If the NRC desires to proceed with any kind of enforcement action, including even the issuance of a notice of violation, then SMI desires to have a pre-decisional enforcement conference, before such enforcement action is undertaken, so that Mr. Sanford can meet with the appropriate NRC representatives personally. Prior to that pre-decisional enforcement conference, SMI requests that all of its files be delivered back to SMI. The SMI records were turned over pursuant to a NRC subpoena that was served several years ago, but despite repeated requests, those files have not been returned to Mr. Sanford (and the originals were taken by the NRC, without affording SMI the opportunity to make copies of all of its files). Further, we also desire to review the complete OI Report 1-1997-050 as well as the underlying documents comprised in the OI investigation. Several of the (purported) factual findings, set forth in the summary of findings of the OI Report, simply are not accurate.

We hope that this letter addresses all of the NRC's concerns, and no further enforcement action will be undertaken. However, if the NRC desires to proceed with further enforcement action, we request that the appropriate NRC representative contact us at your convenience so that arrangements can be made to schedule the pre-decision enforcement conference, and to receive the requested documents in advance to any conference, so that SMI can adequately prepare for the conference.

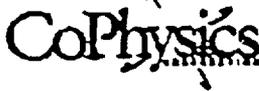
Very truly yours



Gary P. Lightman

GPL:kdt

cc: NRC, Attn: George Pangburn, Director
NRC, Attn: Judith A. Joustra, Sr. Health Physicist
SMI East Coast Medical Waste, Inc.
Attn: Mr. Craig Sanford, President



14

CoPhysics Corporation
1243 Route 206, Moore, NJ 10950
914-783-4463 800-441-7444
Facsimile: 914-783-9191
www.cophysics.com

December 1, 1997

Mr. Robert Ballan, Chief
Bureau of Environmental / Safety Compliance
New Jersey Department of Human Resources
222 S. Warren St.
CN 700
Trenton, NJ 08625

Re: Radioactive Waste Disposal from Arthur Brisbane Child Treatment Center

Dear Mr. Ballan:

After our conversation today regarding your proposed method of disposal for the 60 drums of Brisbane waste, I have compiled all of the information I have about the waste so you can make proper decisions about disposal. The waste consists of the following items:

# of containers	Container Type	Waste Description	Approx. Wt. per drum (lbs)	Approx. Activity per drum (uCi)
47	55-gal drum (1A2)	paper, plastic, cloth, mattresses	150-200	50
4	"	wood furniture, 2 small TV's	250-300	50
3	"	steel bed frames	250-300	50
5	"	floor tiles (mastic has 5% asbestos), plastic	250-300	50
1	"	broken EXIT sign, floor sweepings, misc. parts, cardboard	100	70,000 to 280,000 (excluding EXIT sign*)

Total # of containers: 60
 Approximate total weight: 10,000 lbs
 Radionuclide: tritium (3H)
 Approximate total activity: in 59 decon drums: 2950 uCi
 in EXIT sign drum: 70,000 to 280,000 uCi (assuming no intact tubes remain; up to 14 Ci if 3 intact tubes remain)

Note: The SPL 710AD EXIT sign that was broken had 4 light tubes, each with 3.5 Ci of tritium. When such a tube is broken, 98% of the activity escapes as elemental tritium (hydrogen) gas. Approximately 2% of the tritium in each tube is not in the gaseous form and thus remains on the broken glass and other sign parts after a tube breakage. For each tube broken, there would be approximately 70,000 uCi remaining on the broken pieces. Thus, for 1 to 4 broken tubes, there would be 70,000 to 280,000 uCi remaining on the broken pieces. A small fraction of this amount would then be available for tracking away from the breakage area.

I did not see the sign after the breakage, so I do not know how many tubes were intact or broken. The sign could be removed from the drum and inspected if the proper precautions were taken. The material could also be repackaged at that time depending on what is found and what disposal routes are available to you.

As we also discussed, I do not think that SPL is permitted take back a contaminated (broken) EXIT sign. I confirmed this with their Radiation Safety Officer today. Their licensing authority, the NYS Dept. of Labor, warned against taking the broken sign from the NJDEP's Union, NJ cleanup carrier this year. That broken sign still remains undisposed at Brookhaven National Laboratory. If you wish, I can inquire with the NJDEP about sharing a high integrity container with you for disposal of both signs.

Your classification of the cleanup material as medical waste sounds like a good idea if you can ensure that the disposal facility's license limits are not exceeded and the definition of patient contact or use is met.

If you have any questions, please call me anytime. Please note that John Feehey of the NJDEP also requested to be informed of the status of the waste disposal. Since I am not handling the disposal, I will leave this to you.

Best regards,



Theodore B. Rahon, Ph.D., CHP
President

cc Bob Kretvix, Envirogenics, Inc.
Tim Kinsella, Birdsall Engineering, Inc.

MEMO TO: ISOLITE
FAX: (610) 296-8953
FROM: CRAIG SANFORD
DATE: DECEMBER 12, 1997

SMI WILL BE SHIPPING 1 BROKEN EXIT SIGN CONTAINING TRITIUM FILLED LAMPS. WE WILL PREPARE AND SHIP THE SIGN AS PER YOUR REQUIREMENTS.

THIS EXIT SIGN ORIGINALLY IS FROM THE STATE OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES WALL TOWNSHIP, NEW JERSEY FACILITY.

AT THIS TIME WE ARE REQUESTING YOUR RGA #.

IF YOU NEED ANY ADDITIONAL INFORMATION, PLEASE CALL ME AT (215) 295-7203.

THANK YOU.

INVOICE TO:

STATE OF NJ
BRISBANE CHILD TREATMENT CENTER
ATLANTIC AVENUE
PO BOX 625
FARMINGDALE, NJ 07727

ATTENTION: BOB BELLAM

12/04/97 REMOVE 59 CONTAINERS WEIGHING 7209 POUNDS

TRANSPORTATION CHARGE & TRAILER RENTAL FROM HAMPTON SOUTH CAROLINA TO
OAKRIDGE, TENNESSEE \$2500.00

REMOVAL, TRANSPORTATION & DISPOSAL OF BROKEN "EXIT" SIGN TO ISOLITE
\$1000.00

TOTAL DUE: \$3500.00

ISOLITE Corporation • 31 Waterloo Avenue • Berwyn • Pennsylvania • 19312 • (610) 647-8200 • Fax (610) 296-8953

FAX COVER SHEET

TO: CRIG STANFORD - LARRY AYERS

FROM: Rich Reke

SUBJECT: Disposal Policy

FAX NO.: (610) 296-8952

DATE: 11/18/97

PAGES (including cover): 4

Please call if all pages have not been received as indicated.

MESSAGE: For your info.

Please give me a call if you have any questions.

Thank you
Rich Reke
Eastern Regional Mgr.

ISOLITE**BREAKAGE**

ISOLITE Corporation • 31 Waterloo Avenue • Berwyn • Pennsylvania • 19312 • (610) 647-8200 • Fax (610) 296-8953

**GENERAL INSTRUCTIONS IN CASE
OF SIGN BREAKAGE**

1. Contact Isolite Corporation at 1-800-888-5483 immediately.
2. Wipe the surface of the sign with a paper towel.
3. Wrap the sign and the paper towel in a plastic bag and seal. Wash your hands as soon as possible.
4. Put the plastic bag into another plastic bag and seal. Wash your hands.
5. Place a packaging list on the outside of a carton indicating that it contains a damaged sign.
6. Place the sign into the carton and send via UPS (United Parcel Service) to the address given when you call for an RGA number.
7. If shipping will take more than two days, please send via federal express.



EAST COAST MEDICAL WASTE, INC.

1307 South Pennsylvania Avenue
Morrisville, PA 19067
(215) 295-7203 • FAX (215) 736-2051
(609) 392-3229

MEMO TO: BOB BELLAM - NJ DEPARTMENT OF HUMAN SERVICES
FAX: (609) 633-0586
FROM: CRAIG SANFORD 
DATE: NOVEMBER 13, 1997
SUBJECT: WALL TOWNSHIP FACILITY

PER OUR CONVERSATION OF THIS MORNING, SMI/EAST COAST MEDICAL WASTE, INC. HAS OBTAINED PERMISSION FOR THE DISPOSAL AND INCINERATION OF THE LOW SOURCE TRITIUM CONTAMINATED BUILDING CONTENTS FROM YOUR WALL TOWNSHIP FACILITY.

THIS MATERIAL HAS BEEN ACCEPTED BY CHAMBERS MEDICAL TECHNOLOGIES OF SOUTH CAROLINA, INC. LOCATED IN HAMPTON, SOUTH CAROLINA.

YOUR COST FOR REMOVAL, DISPOSAL AND INCINERATION IS \$3.39 PER POUND AND \$6.00 DISPOSAL PER DRUM.

IF YOU NEED ANY ADDITIONAL INFORMATION, PLEASE DO NOT HESITATE TO CALL.

THANK YOU.

COMPLETE MEDICAL AND HAZARDOUS WASTE DISPOSAL

STRAIGHT BILL OF LADING - SHORT FORM - Original - Not Negotiable

SMI/EAST COAST MEDICAL WASTE, INC.

Shipper's No. _____

(Carrier) _____

SCAC. _____

Carrier's No. _____

Received, subject to the classifications and tariffs in effect on the date of this Bill of Lading:

at _____ date _____ from _____

It is properly described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, hereon contained (as specified in Appendix B to Part 1035) which are hereby agreed to by the shipper and accepted for himself and his assigns.

TO: (Mail or street address of consignee for purposes of notification only.)

FROM:

Consignee ISOLITE CORPORATION

STATE OF NEW JERSEY
Shipper BRISBANE CHILD TREATMENT CENTER

Street 31 WATERLOO AVENUE

Street ATLANTIC AVENUE, P.O. BOX 625

Destination BERWYN, PA Zip 19312

Origin FARMINGDALE, NJ Zip 07727

Route:

Delivering Carrier

Trailer Initial/Number

U.S. DOT Hazmat Reg. Number

No. of packages	HM	Description of articles, special marks, and exceptions	Hazard Class	I.D. Number	Packing Group	Weight (subject to correction)	Class or rate	Labels required (or exemption)	Check column
		BROKEN EXIT SIGN, CONTAINING							
		TRITIUM (H3)							
		REC'D							

Remit C.O.D. to:

Address:

City:

State:

Zip:

COD AMT:

\$

Charges Advanced

\$

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

C. O. D. FEE:

Prepaid

Collect \$

FREIGHT CHARGES

Prepaid Collect

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

BRISBANE CHILD TREATMENT

PLACARDS REQUIRED

SMI/EAS

PLACARDS SUPPLIED

YES NO - FURNISHED BY CARRIER
MEDICAL WASTE, INC.

SPECIAL INSTRUCTIONS:

SHIPPER: *Margaret Spivey*

CARRIER: *James F. Fisher*

PER: _____

DATE: _____

PER: _____

DATE: 12/14/97

EMERGENCY RESPONSE

TELEPHONE NUMBER: ()

Permanent post office address of shipper

Monitored at all times the Hazardous Material is in transportation including storage incidental to transportation (§172.604)

9-BLS-C3 (Rev. 6/95)

STRAIGHT BILL OF LADING - SHORT FORM - Original - Not Negotiable

SMI/EAST COAST MEDICAL WASTE, INC.

Shipper's No. _____

(Carrier) _____

SCAC _____ Carrier's No. _____

Received, subject to the classifications and tariffs in effect on the date of this Bill of Lading:

at _____ date _____ from _____
 a property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination, it is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained (as specified in Appendix B to Part 1035) which are hereby agreed to by the shipper and accepted for himself and his assigns.

TO: (Mail or street address of consignee for purposes of notification only.)

FROM: STATE OF NEW JERSEY
 Shipper BRISBANE CHILD TREATMENT CENTER

Consignee CHAMBERS MEDICAL TECH. OF SC

Street 100 NIX STREET

Street ATLANTIC AVENUE, P.O. BOX 625

Destination HAMPTON, SC Zip 29924

Origin FARMINGDALE, NJ Zip 07727

Route: _____

(732) (908) 938-5061

Delivering Carrier _____

Trailer Initial/Number _____

U.S. DOT Hazmat Reg. Number _____

No. of packages	HM	Description of articles, special marks, and exceptions	Hazard Class	LD Number	Packing Group	Weight (subject to correction)	Class or rate	Labels required (or exemption)	Check column
-----------------	----	--	--------------	-----------	---------------	--------------------------------	---------------	--------------------------------	--------------

59		LOW LEVEL TRITIUM (H 3) CONTAMINATED MATERIAL				7209	L85.	(XSR)	
		REC'D & INCINERATED							

Remit C.O.D. to:

Address:

City:

State:

Zip:

COD

AMT:

\$

Charges Advanced

\$

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse to the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

C. O. D. FEE:

Prepaid

Collect \$

FREIGHT CHARGES

Prepaid Collect

BRISBANE CHILD TREATMENT

PLACARDS REQUIRED

SMI/EAS

PLACARDS SUPPLIED

YES NO - FURNISHED BY CARRIER

SHIPPER'S SIGNATURE: _____

SPECIAL INSTRUCTIONS:

SHIPPER: *[Signature]*

PER:

DATE: 12-4-97

CARRIER: *[Signature]*

PER:

DATE: 12-4-97

EMERGENCY RESPONSE

TELEPHONE NUMBER: _____

Partnership Post Office 2002/834 of shipper

Standard in all times the Hazardous Material is in transportation including storage incidental to transportation (172 CO-1)

9-BLS-C3 (Rev. 6/95)