



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

October 24, 2006

EA-06-021

Marcina Wilkinson, President
H&G Inspection Company, Inc.
9315 Summerbell Lane
Houston, Texas 77074

SUBJECT: COMMITMENTS TO BE CONFIRMED BY ORDER (EFFECTIVE IMMEDIATELY) (NRC INSPECTION REPORT 030-29319/04-003 AND OI INVESTIGATION REPORT NO. 4-2005-003)

Dear Ms. Wilkinson:

The enclosed Confirmatory Order is being issued to you as part of a settlement agreement between you and the NRC regarding NRC enforcement actions in response to violations of the NRC's regulations identified during the subject inspection and investigation. By letter dated May 1, 2006, the NRC issued a Notice of Violation and proposed a civil penalty of \$6,500 for a willful violation associated with the failure to block and brace a radiographic exposure device during transport (10 CFR 71.5(a) and 49 CFR 177.842). The Notice of Violation also identified two additional violations that were categorized at Severity Level III, but no civil penalty was proposed for them. The two violations involved failures to: (A) secure from unauthorized removal or access and control and maintain constant surveillance of licensed material in an unrestricted area (10 CFR 20.1801 and 10 CFR 20.1802); and (B) have a second qualified individual observe radiographic operations (10 CFR 34.41(a)).

Our May 1, 2006, letter offered you, in lieu of submitting the required response to the notices of violation and proposed civil penalty, the option of requesting Alternative Dispute Resolution (ADR) in an attempt to resolve any disagreements between you and the NRC. You requested ADR to resolve this matter with the NRC. ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC currently employs is mediation.

On August 24, 2006, an ADR mediation session was held between you and the NRC. Based on that session, you and the NRC reached a settlement agreement. In summary, you agreed that the three violations cited in the May 1, 2006, Notice of Violation did occur and that Violation C (failure to block and brace a radiographic device) involved willfulness on the part of the radiographers involved. The NRC considers that the actions in the attached Confirmatory Order are sufficient to address these issues.

We note that, pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Confirmatory Order should be addressed to Mr. Michael Vasquez, NRC Region IV at 817-860-8121 or Ms. Sally Merchant, Office of Enforcement, who can be reached at 301-415-2747.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure 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>. To the extent possible, any response you provide should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Enclosure: Confirmatory Order

cc w/Enclosure:
State of Texas Radiation Control Program Director
State of Wyoming Radiation Control Program Director

H&G Inspection Company, Inc. EA-06-021

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 030-29319
H&G Inspection Company, Inc.)	License No. 42-26838-01
Houston, TX)	EA-06-021

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

H&G Inspection Company, Inc. (H&G), is the holder of Materials License No. 42-26838-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on July 30, 1986, last amended on June 3, 2003, and is due to expire on June 30, 2013. The license authorizes H&G to possess sealed radioactive sources for use in conducting industrial radiography activities in accordance with the conditions specified therein.

II

An NRC inspection was conducted at a temporary job site in Rock Springs, Wyoming, and at the H&G field office located in Evanston, Wyoming, on December 15, 2004. Following that inspection, an investigation was initiated on January 31, 2005, by the NRC Office of Investigations (OI) in order to determine whether two radiographers employed by H&G willfully violated NRC regulations.

ENCLOSURE

Based on the results of the NRC inspection and OI investigation, the NRC determined that three violations of NRC requirements occurred. The violations involved failures to: (A) secure from unauthorized removal or access and control and maintain constant surveillance of licensed material in an unrestricted area (10 CFR 20.1801 and 10 CFR 20.1802); (B) have a second qualified individual observe radiographic operations (10 CFR 34.41(a)), (C) and block and brace a radiographic exposure device during transport (10 CFR 71.5(a) and 49 CFR 177.842(d)). The NRC also determined that Violation C resulted from willful actions on the part of the two radiographers involved.

III

In a letter dated May 1, 2006, the NRC issued a Notice of Violation and proposed Civil Penalty for the three violations identified as a result of the December 15, 2004, inspection and subsequent OI investigation. In the May 1, 2006, letter, the NRC offered H&G the opportunity to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve issues associated with these violations. In response to the May 1, 2006, letter, H&G requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and H&G to resolve any differences regarding the matter.

An ADR session was held between H&G and the NRC in Arlington, Texas, on August 24, 2006. During that ADR session, an agreement was reached. The elements of the agreement consisted of the following:

1. The NRC and H&G agree that a Severity Level-III violation of 10 CFR 20.1801 and 10 CFR 20.1802 did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that the licensee stored its radiography camera in the mobile darkroom of its truck parked at the licensee's facility in Evanston, Wyoming, and the door to the darkroom was left unsecured and the licensee did not otherwise control and maintain constant surveillance of the licensed material.

2. The NRC and H&G agree that a Severity Level-III violation of 10 CFR 34.41(a) did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that, although the licensee had two qualified individuals present at a temporary jobsite in Rock Springs, Wyoming, where radiographic operations were being performed, the second qualified individual (radiographer's assistant) was physically located in the licensee's mobile darkroom during radiographic operations, and was therefore not able to observe the operations or provide immediate assistance to prevent unauthorized entry.

3. The NRC and H&G agree that a violation of 49 CFR 177.842(d) did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that the licensee transported a radiographic exposure device containing licensed material to and from a temporary job site without the required blocking and bracing.

4. The NRC and H&G agree that the violation of 49 CFR 177.842(d), as noted in the Notice of Violation dated May 1, 2006, was a willful act on the part of the radiographers involved.

5. The NRC recognizes that H&G took the following immediate and effective corrective actions: (1) replacing the area supervisor in the associated field office; (2) replacing other personnel in that field office, including those involved in the willful violation; (3) holding company-wide safety meetings about the deficiencies that NRC found; (4) completing implementation of a new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (5) conducting additional field audits; (6) conducting retraining for affected individuals; and (7) clarifying Operation and Emergency procedures regarding the requirements for the 2-person rule.

6. The NRC and H&G agree that the actions in this paragraph are sufficient to address the NRC's concerns. H&G agrees to issuance of this letter and Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding this Confirmatory Order. The NRC and H&G further agree that this Confirmatory Order should include the following elements:
 - A. H&G will continue to implement the following corrective actions: (1) a new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (2) conducting additional field audits; and (3) annual training on Operation and Emergency procedures regarding the requirements for the 2-person rule.

- B. Not later than 1-year from the date of this Confirmatory Order, H&G will write and submit an article (for publication by both the American Society of Non-Destructive Testing (ASNT) and the Non-Destructive Testing Managers Association (NDTMA)) that is mutually agreeable. The article will address the new H&G management oversight program (detailed below) and the value it adds to overall safe and effective operations. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article will be submitted to the NRC Region IV office for review, comment, and concurrence.
- C. H&G agrees to implement a management review and oversight program with the following elements:
 - a. Training of the three area supervisors and three office managers to the Radiation Safety Officer level.
 - b. Requiring each of the six individuals in 6.C.a to conduct unannounced audits of one of the other field offices on a rotating basis (quarterly for the first 2 years, and annually thereafter).
 - c. Requiring one of the three senior corporate managers (Radiation Safety Officer, Chief Operations Officer, and President) to conduct unannounced performance observations at each of the field offices on a rotating basis twice a year. Meaning each field office will receive a visit from a senior corporate manager twice each year.
- D. H&G understands that the NRC, as part of its normal process, will issue a press release with this Confirmatory Order. The NRC will provide H&G a copy of the press release prior to its release.

- E. In recognition of H&G's extensive corrective actions, the NRC agrees to reduce the Civil Penalty originally proposed to \$500.

On October 10, 2006, H&G consented to issuing this Confirmatory Order with the commitments, as described in Section IV below. H&G further agreed in the October 10, 2006, letter that this Confirmatory Order is to be effective upon issuance and that they have waived their right to a hearing. Implementation of these commitments will resolve the NRC's concerns and will satisfy the response requirements listed in the May 1, 2006, Notice of Violation such that no additional written response to that letter is necessary.

I find that H&G's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that H&G's commitments be confirmed by this Order. Based on the above and H&G's consent, this Confirmatory Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 2.205, 10 CFR Parts 20, 34, and in Part 71 that references 49 CFR 177, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. The NRC reduces the civil penalty proposed by letter dated May 1, 2006, in the amount of \$6,500, to \$500.
2. H&G will continue to implement the following corrective actions: (1) a new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (2) conducting additional field audits; (3) annual training on Operation and Emergency procedures regarding the requirements for the 2-person rule.
3. Not later than 1-year from the date of this Confirmatory Order, H&G will write and submit an article (for publication by both the American Society of Non-Destructive Testing (ASNT) and the Non-Destructive Testing Managers Association (NDTMA)) that is mutually agreeable. The article will address the new H&G management oversight program (detailed below) and the value it adds to overall safe and effective operations. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article will be submitted to the NRC Region IV office for review, comment, and concurrence.
4. H&G agrees to implement a management review and oversight program with the following elements:
 - (a). Training of the three area supervisors and three office managers to the Radiation Safety Officer level.
 - (b). Requiring each of the six individuals in 4 (a) above to conduct unannounced audits of one of the other field offices on a rotating basis (quarterly for the first 2 years, and annually thereafter).
 - (c). Requiring one of the three senior corporate managers (Radiation Safety Officer, Chief Operations Officer, and President) to conduct unannounced

performance observations at each of the field offices on a rotating basis twice a year. Meaning each field office will receive a visit from a senior corporate manager twice each year.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by H&G of good cause.

V

Any person adversely affected by this Confirmatory Order, other than H&G, may request a hearing within 20 days of its issuance. 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. Any request for a hearing 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, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to H&G Inspection. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to

OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309 (d) and (f).

If a hearing is requested by 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 Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Bruce S. Mallett, Regional Administrator

Dated this 24th day of October 2006