

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	Docket No. 030-35114
MISTRAS Holding Group)	License No. 12-16559-02
doing business as Conam Inspection)	EA-08-156, EA-08-166
and Engineering Services, Inc.; and)	
Quality Services Laboratories, Inc.)	
Burr Ridge, Illinois)	

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

MISTRAS Holding Group, doing business as Conam Inspection and Engineering Services, Inc. and Quality Services Laboratories, Inc. (CONAM or licensee) is the holder of Materials License No. 12-16559-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on August 31, 1999. The license authorizes CONAM to conduct radiography operations in locations within the NRC's jurisdiction.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 10, 2008.

II

On January 20, 2007, the licensee reported a possible overexposure event that occurred in the early morning hours at a Sunoco refinery in Philadelphia, Pennsylvania, where radiographers, dispatched from the licensee's Trainer, Pennsylvania office, were working. The NRC conducted an inspection, which began on January 22, 2007, with continued NRC in-office review through March 27, 2008, and a final telephone exit call on May 29, 2008. On March 2, 2007, the NRC Office of Investigations (OI) began an investigation (OI Case No. 3-2007-011). Based on the evidence developed during the inspection and investigation, the NRC identified five apparent

violations of NRC requirements: (1) a willful failure by a radiographer to secure the sealed source in the shielded position at the end of the exposure time; survey the area, camera, and source tube to verify that the source is stored in the shielded position; note the position of the camera's lock slide; rotate the selector ring to the "lock" position; and depress the plunger lock after the third radiographic exposure on January 20, 2007, as required by Condition 20.c of the license; (2) a willful failure by a radiographer to wear an operating alarm rate meter at all times during the first three radiographic exposures on January 20, 2007, as required by Condition 20.c of the license; (3) a deliberate failure by a radiographer to wear an operating alarm rate meter at all times during the fourth radiographic exposure on January 20, 2007, as required by Condition 20.c of the license; (4) a deliberate failure by a radiographer to stop radiographic operations after the third radiographic exposure on January 20, 2007, when a radiographer's pocket chamber was identified as being off-scale, as required by Condition 20.c of the license; and (5) a failure to ensure that the individual named as the Radiation Safety Officer (RSO) in the license served as the RSO, as required by Condition 11 of the license.

The results of the inspection and the investigation were sent to CONAM in a letter dated June 20, 2008. This letter offered CONAM the opportunity to either participate in ADR mediation or to attend a pre-decisional enforcement conference. In response to the NRC's offer, CONAM requested use of the NRC's ADR process to resolve the differences it had with the NRC. On July 3, 2008, the NRC and CONAM agreed to mediate. On September 10, 2008, the NRC and CONAM participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

During the September 10, 2008, ADR session, a preliminary settlement agreement was reached.

The elements of the agreement consisted of the following:

- 1.a. CONAM will increase the number of audits of radiography personnel above the minimum regulatory requirement for the next two 6-month audit periods by twenty five percent.
After the completion of those increased audits, CONAM will analyze the audit results and assess whether any change should be made to audit frequency, and inform the NRC of the results of its assessment.
- b. CONAM will develop procedures to reflect its current corporate oversight of in-field activities, to include the practice of increasing oversight or localized auditing of activities identified as a "major" versus "minor" concern.
- c. Guidance for field auditors will be revised to require that audits will be, to the extent possible, unannounced and unobserved. Guidance will also require that field auditors note whether self-check/peer-check practices occur.
2. CONAM will develop a procedure for identifying lessons-learned that need to be communicated/delivered to radiography staff through the eLearn training system. The eLearn system will also include modules on the importance of peer check and avenues for reporting safety issues. The eLearn system will be online within 18 months.
3. CONAM will develop a safety hotline for the anonymous reporting of safety concerns. In addition, CONAM will conduct an initial baseline safety conscious work environment (SCWE) survey, to be followed by a later SCWE survey to assess any changes in SCWE

over the previous 12-18 months. CONAM will provide the NRC a summary of the survey results after each survey.

4. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 20, 2008, letter to CONAM and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy, NUREG-1600.
5. In the event of the transfer of the operating license of Conam Inspection and Services to another entity, the terms and conditions set forth hereunder shall continue to apply and accordingly shall survive any transfer of ownership or license.

On October 15, 2008, the licensee consented to issuing this Order with the commitments, as described in Section V below. The licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the licensee's commitments as set forth in Section V 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 public health and safety require that the licensee's commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 12-16559-02 IS MODIFIED AS FOLLOWS:

- 1a. CONAM will increase the number of audits of radiography personnel above the minimum requirement stated in 10 CFR 34.43(e)(1) to observe the performance of each radiographer and radiographer's assistant during actual industrial radiographic operation at intervals not to exceed six months. For the next two six month periods, commencing no later than January 1, 2009, CONAM will perform an additional second audit on 25 percent of the radiographers and radiographer assistants, including contract personnel. After the completion of each increased audit cycle, CONAM will analyze the audit results and assess whether any changes should be made to audit frequency. CONAM will inform the NRC of the results of each assessment within three months of completion of the increased audit.
- b. CONAM will develop or revise procedures governing its current corporate oversight of in-field audit activities of radiography operations. The procedures will provide guidance on assessing and categorizing the significance of observations, such as into significant (major) and non-significant (minor) concerns. The procedures will address the actions to be taken, such as increased oversight or localized auditing of activities, that will occur when significant concerns are identified. These procedures will be developed and implemented by no later then March 1, 2009.

- c. CONAM will develop or revise procedures for the conduct of field audits to require that audits will be conducted, to the extent possible, unannounced and unobserved by those being audited. The procedures will require that field auditors assess whether the radiographers and radiographer assistants are using self-check and peer-check best practices. These procedures will be developed and implemented by no later than March 1, 2009.
2. CONAM will develop procedures for identifying and communicating "Lessons-Learned" to radiography staff and will implement the procedure by providing "Lessons-Learned" to all staff through the eLearn system or any other training method used by the licensee. The eLearn or other training system will also include modules on the importance of peer checks and on the avenues for reporting safety issues. The eLearn or other training system modules will be completed and provided to all radiographers and radiographer assistants within 18 months, and will be included as part of all future initial and refresher training.
- 3.a CONAM will develop and implement a safety hotline for the anonymous reporting of safety concerns. The safety hotline will be in place by January 1, 2009 and all employees and contractors will be informed about the new safety hotline by no later than March 1, 2009. Information regarding the safety hotline will be included as part of all future initial and refresher training.
- b. In addition, CONAM will conduct an initial baseline safety conscious work environment (SCWE) survey, to be followed by a later SCWE survey to assess any changes in SCWE over the previous 12-18 months. CONAM will provide the NRC a summary of the survey results within three months of each survey being completed and will take corrective

actions for identified problems. The first survey will be completed by no later than March 1, 2009, with the follow-up survey to be within 12-18 months of the initial survey.

4. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 20, 2008, letter to CONAM and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.
5. In the event of the transfer of the operating license of Conam Inspection and Services to another entity, the terms and conditions set forth hereunder shall continue to apply and accordingly shall survive any transfer of ownership or license.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the licensee, 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at hearingdocket@nrc.gov, or by calling (301) 415-1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or

representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the

adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than (the licensee) 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 C.F.R. 2.309(d) and (f).

If the 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 V 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 V shall be final when the extension expires if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

James L. Caldwell, Regional Administrator, Region III /RA/

Dated this 28th day of October 2008