

March 10, 2009

EA-08-158

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

SUBJECT: CONFIRMATORY ORDER (EFFECTIVELY IMMEDIATELY) [Office of
Investigations Report No. 1-2007-023]

Dear Mr. Sisson:

The enclosed Confirmatory Order is being issued to Quality Inspection Services, Inc. (QISI) to confirm recent commitments made to the NRC. The commitments were made by QISI as part of a settlement agreement between QISI and the NRC concerning a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) issued by the NRC on September 15, 2008. In the Notice, the NRC documented four violations of NRC requirements, one of which was considered to have been willful. The NRC proposed a \$6,500 civil penalty for the willful violation.

Since one violation was willful, the September 15, 2008, letter included an offer to QISI to use the Alternative Dispute Resolution (ADR) program, in an attempt to resolve any issues it had with the enforcement action. 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 action. In response, on October 22, 2008, QISI requested the use of ADR. An ADR mediation session was held on January 22, 2009, at the Scheinman Institute on Conflict Resolution, Cornell University, Ithaca, New York, during which a preliminary settlement agreement was reached. The elements of the preliminary agreement formulated and agreed to at the mediation session are contained within the enclosed Confirmatory Order.

As part of the settlement agreement, QISI agreed to take a number of actions including: (1) revising the existing Operations and Emergency (O&E) Manual to emphasize the importance of safe performance of radiography, strict compliance with requirements, being complete and accurate in all communications, and understanding that engaging in any willful misconduct will not be tolerated; (2) retraining all employees regarding the revisions to the O&E Manual; (3) adding a radiation safety component to the existing Corporate Newsletter, to be issued at least quarterly, focusing on radiation safety updates (the front page of the next newsletter issued will include a message from you that emphasizes the importance of safety and compliance with the requirements); (4) developing a video recording that will include the message emphasizing the importance of safety and compliance with the requirements, will be required viewing for all company employees who are involved in any manner in activities subject to NRC jurisdiction, and will be placed on the QISI website for employee viewing and access;

(5) placing the video on the QISI public website, and offering to make the video available for a presentation at a national industry conference; (6) increasing the audits of each of the radiographers working in areas of NRC jurisdiction to three times annually for two years following issuance of this Confirmatory Order; and, (7) including, as part of the next two NRC required annual reviews of the radiation safety program, an inquiry (independent of the Corporate Radiation Safety Officer), of all radiographers working in NRC jurisdiction, to assess the effectiveness of adherence to NRC requirements. QISI also agreed to send the NRC a letter documenting completion of the actions provided in the attached Order within 30 days of having completed the actions. In recognition of these actions, as well as those corrective actions QISI has already completed, the NRC agreed to reduce the civil penalty amount to \$500, and QISI agreed to pay this amount. The NRC will evaluate the implementation of your commitments in future inspections.

The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made in the settlement agreement. In the signed "Consent and Hearing Waiver Form" (copy enclosed) dated March 4, 2009, you agreed to issuance of this letter and the Confirmatory Order.

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 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 penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at Office of the Regional Administrator, US NRC, 475 Allendale Rd., King of Prussia, PA 19406. If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached Confirmatory Order, on its website at www.nrc.gov; select, What We Do, Enforcement, Significant Enforcement Actions. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,

/RA/

Marc L. Dapas,
Deputy Regional Administrator

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

Enclosures:

1. Signed Hearing Waiver Consent Form
2. Confirmatory Order

Dist. 4 2009 11:20AM

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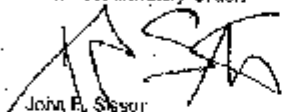
ARC

510-337-6389 P-004

Enclosure f

Consent and Hearing Waiver Form

Quality Inspection Services, Inc. (QISI) hereby agrees with the attached immediately effective Confirmatory Order. I recognize that by signing below, QISI consents to the issuance of the Confirmatory Order, effective immediately, containing commitments agreed to as incorporated into the Confirmatory Order, including payment of the civil penalty. The agreement was reached during the ADR mediation session held in Ithaca, NY, on January 22, 2009. By agreeing to the attached Confirmatory Order, pursuant to 10 CFR 2.202(a)(3) and (4), QISI waives the right to request a hearing on all or any part of the Confirmatory Order.


John E. Sisson
President
Quality Inspection Services, Inc.

3-4-09
Date

(5) placing the video on the QISI public website, and offering to make the video available for a presentation at a national industry conference; (6) increasing the audits of each of the radiographers working in areas of NRC jurisdiction to three times annually for two years following issuance of this Confirmatory Order; and, (7) including, as part of the next two NRC required annual reviews of the radiation safety program, an inquiry (independent of the Corporate Radiation Safety Officer), of all radiographers working in NRC jurisdiction, to assess the effectiveness of adherence to NRC requirements. QISI also agreed to send the NRC a letter documenting completion of the actions provided in the attached Order within 30 days of having completed the actions. In recognition of these actions, as well as those corrective actions QISI has already completed, the NRC agreed to reduce the civil penalty amount to \$500, and QISI agreed to pay this amount. The NRC will evaluate the implementation of your commitments in future inspections.

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Sincerely,
/RA/

Marc L. Dapas,
Deputy Regional Administrator

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

- Enclosures:
1. Consent and Hearing Waiver Form
2. Confirmatory Order

SUNSI Review Complete: aed (Reviewer's Initials)

DOCUMENT NAME: S:\enf-all\enforcement\proposed-Actions\region1\QISI ADR VERSION @.doc

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Enforcement Coordinators

RII, RIII, RIV (C Evans; J Heck; K Fuller)

E Hayden, OPA

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M Williams, OCFO

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R1DNMSMailResource

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[7590-01-P]

In the Matter of
Quality Inspection Services, Inc.

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)
)

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

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Quality Inspection Services, Inc. (QISI) (Licensee) is the holder of a byproduct materials license issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license was last renewed on November 28, 2005 (Amendment 8), and was last amended on March 11, 2008 (Amendment 12). The license authorizes the operation of the QISI facility in accordance with conditions specified therein. The facility is located on the Licensee's site in Manchester, Connecticut.

II

The NRC Office of Investigations (OI) initiated an investigation on March 16, 2007, in part, to determine whether QISI willfully performed unauthorized radiography operations. Based on the evidence developed during the OI investigation, which was completed on November 30, 2007, the NRC identified an apparent willful violation involving QISI failing to maintain utilization logs for sealed sources, as required by 10 CFR 34.71. A description of this apparent violation and a factual summary of the results of the investigation were sent to QISI in an NRC letter dated August 15, 2008.

At the NRC's request, QISI attended a predecisional enforcement conference (PEC) on August 27, 2008, to discuss the apparent violation and the results of the OI investigation. After considering the information presented in the PEC and the evidence developed during the investigation, the NRC determined that the violation occurred and was willful. Specifically, between November 15, 2006, and March 2, 2007, QISI's former site radiation safety officer (RSO) willfully failed to log the following information 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. In a letter dated September 15, 2008, the NRC issued QISI a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$6,500 for this violation.

Because the violation was willful, the September 15, 2008 NRC letter included an offer to QISI to use the Alternative Dispute Resolution (ADR) program, in an attempt to resolve any issues it had with the enforcement action. The ADR program 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. In response, on October 22, 2008, QISI requested the use of the ADR program.

III

On January 22, 2009, the NRC and QISI met in an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman Institute on Conflict Resolution. During that ADR session, a preliminary settlement agreement was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. The NRC and QISI agree that the violation of 10 CFR 34.71, referenced in the NRC letter, dated September 15, 2008, occurred, as stated in the referenced Notice.
2. As documented in the September 15, 2008 NRC letter, QISI has taken several corrective actions in response to the willful violation, as well as other violations identified in the Notice of Violation and Proposed Imposition of Civil Penalty. Those actions, which the NRC agrees were prompt and comprehensive include: ensuring that employees involved in radiography activities have reviewed QISI's Operations and Emergency (O&E) Manual, and reinforcing expectations regarding the existing Employee Concerns Program, specifically emphasizing the opportunity for employees to raise safety concerns.
3. As a result of the ADR session, QISI agrees to take the following additional actions:
 - a. Revise the existing O&E Manual to emphasize the importance of safe performance of radiography, strict compliance with requirements, all staff being complete and accurate in all communications, and all staff understanding that engaging in any willful misconduct will not be tolerated.
 - b. Retrain all employees regarding the revisions to the O&E manual.
 - c. Add a radiation safety component to the existing Corporate Newsletter, to be issued at least quarterly, focusing on radiation safety updates. In the first newsletter issued following the NRC Confirmatory Order confirming these commitments, the front page of that newsletter will include a message from the QISI President which emphasizes the importance of safe performance of

radiography, strict compliance with requirements, all staff being complete and accurate in all communications, and all staff understanding that engaging in any willful misconduct will not be tolerated.

- d. Develop a video recording (DVD) that will be required viewing by all company employees who are involved in any manner in activities subject to NRC jurisdiction, and will also be placed on the QISI website for employee viewing and access. The video will include opening remarks by either the QISI President or the QISI Executive Vice President providing the expectations set forth in the Corporate Newsletter described in Item 3.c.
- e. Place the DVD referenced in Item 3.d on the QISI public website, and offer to make the DVD available for a presentation at a national industry conference (e.g. American Society for Nondestructive Testing).
- f. Increase the audits of each radiographer working in areas of NRC jurisdiction to three times annually for two years following issuance of this Confirmatory Order, and have these audits conducted by the Corporate Radiation Safety Officer (RSO).
- g. Include, as part of the next two NRC required annual reviews of the radiation safety program, an inquiry (independent of the Corporate RSO) of all radiographers working in NRC jurisdiction. The inquiry will assess the effectiveness of adherence to NRC requirements, and implementation of the actions set forth above. The inquiry will encourage all radiographers to raise any

concerns they have, and to do so anonymously if they so chose. The results will be summarized and provided to the QISI President.

- h. Complete the actions set forth in Items 3.a through 3.e within six months of the Confirmatory Order issued to confirm this agreement. Complete the actions in Items 3.f through 3.g within two years of the Confirmatory Order.
 - i. Upon completion of the actions set forth in Items 3.a through 3.e, send the NRC a letter summarizing the completed actions within 30 days confirming that each of those actions has been completed. Upon completion of the actions set forth in Items 3.f through 3.g, send the NRC another letter summarizing the completed actions within 30 days, confirming that those actions have been completed.
4. In light of the corrective actions that QISI took to correct the violations, as noted in Item 2, as well as the additional actions QISI committed to take, as described in Item 3, the NRC agrees to reduce the amount of the civil penalty to \$500. QISI agrees to pay this amount.

On March 4, 2009, 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 the Licensee 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 also 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 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT QISI SHALL:

- A. Revise the existing O&E Manual to emphasize the importance of safe performance of radiography, strict compliance with requirements, all staff being complete and accurate in all communications, and all staff understanding that engaging in any willful misconduct will not be tolerated;
- B. Retrain all employees regarding the revisions to the O&E manual;

- C. Add a radiation safety component to the existing Corporate Newsletter, to be issued at least quarterly, that will focus on radiation safety updates, and have the front page of the first newsletter issued following this NRC Confirmatory Order confirming these commitments include a message from the QISI President which emphasizes the importance of safe performance of radiography, strict compliance with requirements, all staff being complete and accurate in all communications, and all staff understanding that engaging in any willful misconduct will not be tolerated;

- D. Develop a video recording (DVD) that will be required viewing by all company employees who are involved in any manner in activities subject to NRC jurisdiction, and will also be placed on the QISI website for employee viewing and access; the video will include opening remarks by either the QISI President or the QISI Executive Vice President providing the expectations set forth in the Corporate Newsletter described in Item C;

- E. Place the DVD referenced in Item D on the QISI public website, and offer to make the DVD available for a presentation at a national industry conference (e.g. American Society for Nondestructive Testing);

- F. Increase the audits of each of the radiographers working in areas of NRC jurisdiction to three times annually for two years following issuance of this Confirmatory Order, and have these audits conducted by the Corporate RSO;

- G. Include, as part of the next two NRC required annual reviews of the radiation safety program, an inquiry (independent of the Corporate RSO) of all radiographers working in NRC jurisdiction; ensure the inquiry assesses the effectiveness of adherence to NRC

requirements, and implementation of the actions set forth above in Items V.A - V.F; and use the inquiry to encourage all radiographers to raise any concerns they have, and to do so anonymously if they so chose;

- H. Complete the actions set forth in Items V.A - V.E within six months of the date of this Confirmatory Order, and complete the actions in Items V.F - V.G within two years of the date of this Confirmatory Order;
- I. Upon completion of the actions set forth in Items V.A - V.E, send the NRC a letter, within 30 days, confirming that those actions have been completed;
- J. Upon completion of the actions set forth in Items V.F - V.G, send the NRC another letter, within 30 days, confirming that those actions have been completed; and,
- K. Pay a civil penalty in the amount of \$500, within 30 days of the date of this Confirmatory Order.

The Regional Administrator, Region I, 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 (5) 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, MD, 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

/RA/

Marc L. Dapas,
Deputy Regional Administrator

Dated this the 10th day of March 2009

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

/RA/

Marc L. Dapas,
Deputy Regional Administrator

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