

February 8, 2011

EA-10-077

Mr. David E. Wallace
Chief Executive Officer, Superior Well Services, Ltd.
1380 Route 286 East, Suite 121
Indiana, PA 15701

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC Inspection Report No. 03034542/2009001 and NRC Office of
Investigations Report No. 1-2009-035)

Dear Mr. Wallace:

The enclosed Confirmatory Order is being issued to you to confirm recent commitments made to the U.S. Nuclear Regulatory Commission (NRC). Superior Well Services, Ltd. (SWS) made these commitments as part of an Alternative Dispute Resolution (ADR) agreement with the NRC concerning a Notice of Violation (Notice) and Proposed Imposition of Civil Penalty (CP) in the amount of \$34,000 that was issued by the NRC to SWS on October 21, 2010, following a predecisional enforcement conference (PEC) held on September 2, 2010, to discuss apparent violations of NRC requirements. The Notice and proposed CP were issued for five violations that were categorized into two severity level (SL) III problems. The first SL III problem involved three violations related to the temporary loss of two radioactive well logging sources. The second SL III problem involved two violations related to the deliberate failure to conduct radiological surveys and the creation of inaccurate survey records.

In response to the October 21, 2010, Notice and proposed CP, SWS requested the use of the NRC's ADR process to resolve the differences it had with the NRC regarding the Notice and proposed CP, and on November 17, 2010, also sent the NRC a written response to the Notice. In a December 16, 2010, letter, the NRC acknowledged receipt of SWS's correspondence dated November 17, 2010, and committed to providing a response at a later date. In addition to forwarding the enclosed Confirmatory Order, this letter will serve as the NRC's response to the November 17, 2010, SWS letter.

ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement to resolve any differences regarding the enforcement action. On January 4, 2011, an ADR mediation session was held in the Region I Office in King of Prussia, PA. Based on the discussions during the mediation session, an agreement in principle was reached regarding this matter. The elements of the agreement in principle formulated and agreed to at the mediation session are contained within the enclosed Confirmatory Order. While the NRC and SWS agreed to disagree regarding the occurrence of the two violations that comprised the second SL III problem, SWS took several actions prior to the PEC, additional actions on its own volition after the PEC, and also agreed to take further actions as a result of the ADR mediation session to address the violations. These actions are intended to ensure that the corrective actions are effective, and to ensure that lessons learned from these events are

extended to the well logging industry. In light of these actions taken by SWS, as well as the additional actions SWS committed to take, the NRC agreed to reduce the amount of the CP to \$17,000. As part of the agreement in principle, SWS agreed to pay this \$17,000 CP. The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made in the agreement in principle. In the signed "Consent and Hearing Waiver Form" (copy enclosed) received February 4, 2011, SWS agreed to issuance of this letter and the Confirmatory Order. With regard to SWS's November 17, 2010, letter, the issues raised by SWS were discussed and considered during the ADR mediation session, and the resolution of these issues was incorporated into the agreement in principle and enclosed 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. A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room and 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 and from ADAMS.

If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 03034542
License No. 37-30412-01

Enclosures:

1. Consent and Hearing Waiver Form
2. Confirmatory Order
3. NUREG/BR-0254 Payment methods

cc w/encl:

Lewis Cessna, Radiation Safety Officer
Commonwealth of Pennsylvania
State of West Virginia
State of Michigan

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If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,
/RA/
 William M. Dean
 Regional Administrator

Docket No. 03034542
 License No. 37-30412-01

- Enclosures:
1. Consent and Hearing Waiver Form
 2. Confirmatory Order
 3. NUREG/BR-0254 Payment methods

cc w/encl:
 Lewis Cessna, Radiation Safety Officer
 Commonwealth of Pennsylvania
 State of West Virginia
 State of Michigan

Distribution: See next page

SUNSI Review Complete: MMM (Reviewer's Initials)

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Enclosure 1

Consent and Hearing Waiver Form

Superior Well Services Ltd. (SWS) hereby agrees to comply with the terms and conditions of the Confirmatory Order arising out of an alternative dispute resolution process to be issued relating to enforcement action No. 10-077. The Confirmatory Order will be immediately effective upon its issuance. By signing below, SWS consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order.



David E. Wallace
Chief Executive Officer, Superior Well Services, Ltd.

2-4-11
Date:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[7590-01-P]

In the Matter of) Docket No.: 03034542
Superior Well Services, Ltd.) License No: 37-30412-01
Indiana, PA)
) EA-10-077

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Superior Well Services, Ltd (SWS or Licensee) is the holder of radioactive material License No. 37-30412-01 issued by the U.S. Nuclear Regulatory Commission (NRC or agency) pursuant to 10 CFR Part 30. The license authorizes the possession, storage, and use of radioactive sources for oil and gas well logging at the Licensee's facilities in Buckhannon, West Virginia, Sophia, West Virginia, and Gaylord, Michigan, and at temporary jobsites within the NRC's jurisdiction, in accordance with conditions specified therein.

II

On October 21, 2010, the NRC issued a Notice of Violation (Notice) and Proposed Imposition of Civil Penalty (CP) in the amount of \$34,000 for five violations that were categorized into two severity level (SL) III problems. The violations were identified during an NRC inspection as well as an investigation conducted by the NRC Office of Investigations (OI). (Reference: NRC Inspection Report No. 03034542/2009001 and OI Investigation Report No. 1-2009-035). The violations were also discussed at a predecisional enforcement conference (PEC) on September 2, 2010.

The first SL III problem described in the Notice related to an event that occurred on September 20, 2008, when two well-logging sealed sources fell off of a company truck during transport. One violation involved the failure to secure the packages containing the licensed material from shifting during transport. On September 20, 2008, when the truck transporting these sources reportedly hit a large pothole, the weld securing the source plate to the truck broke, and the sources fell off of the truck and remained unattended by the side of a public highway. The second violation involved the failure to control and maintain constant surveillance of the sources while they were on the highway (an unrestricted area). Since SWS did not recognize that the sources had fallen out of the truck until the truck reached its destination at the SWS facility in Buckhannon, WV, the sources remained unattended for approximately ninety minutes until SWS personnel located and retrieved the sources. The third violation involved the failure to immediately report this occurrence by telephone to the NRC Operations Center. The involved SWS employees, including the site Radiation Safety Officer (RSO) for the associated SWS facility, did not recognize the need to report this event to the NRC. As a result, SWS did not provide the required immediate telephone notification of this event to the NRC Operations Center until July 23, 2009, after an NRC inspector informed SWS of the reportability requirement while conducting a routine inspection.

The second SL III problem described in the Notice involved SWS's failure to conduct required radiological surveys of vehicles before transporting licensed material and the deliberate falsification of survey records for these vehicles. Specifically, former SWS employees informed the NRC inspector and investigator that on numerous occasions, they did not perform the surveys and they instead completed the survey forms by copying data from previously completed forms. The employees' failure to perform the required radiological surveys of vehicles prevented SWS from assuring that the dose rates inside and outside the trucks did not exceed limits set by the NRC and the U.S. Department of Transportation. The employees who admitted to the NRC

that they had falsified survey records indicated that they did so because they did not know how to use the survey instruments.

III

In response to the October 21, 2010, NRC letter, SWS requested the use of the NRC's Alternative Dispute Resolution (ADR) process to resolve differences it had with the NRC regarding the Notice. ADR is a process in which a neutral professional mediator with no decision-making authority assists the parties in reaching an agreement to resolve any differences regarding the enforcement action. On January 4, 2011, the NRC and SWS met in an ADR mediation session, arranged through Cornell University's Scheinman Institute on Conflict Resolution. During that ADR mediation session, an agreement in principle was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. SWS did not take issue with the NRC conclusion set forth in the October 21, 2010, letter and enclosed Notice that the subject violations regarding the temporary loss of two well-logging sources occurred as identified. Further, SWS did not take issue with the NRC conclusion that the violations collectively warranted classification as an SL III problem and that SWS was subject to a civil penalty in accordance with the NRC Enforcement Policy, since the violations involved the loss of sealed sources.
2. Regarding the subject violations related to the failure to conduct radiological surveys, however, SWS maintained that the surveys were performed and that the employees who admitted to the NRC that they had falsified survey records did so because they were disgruntled after they had lost their jobs with SWS. Based upon the sworn

testimony of the involved individuals, the NRC maintained that the former employees did not perform the surveys and that they created records indicating that the surveys had been performed when, in fact, they knew the surveys had not been performed. Although the NRC acknowledged that SWS management did not encourage or condone this practice, the NRC maintained that SWS was accountable because licensees are responsible for the actions of their employees. The NRC and SWS agreed to disagree on this violation.

3. The NRC acknowledged that SWS had taken several corrective actions in response to the violations, so as to preclude the occurrence of similar violations in the future. These actions include:
 - a. For the SL III Problem involving violations associated with the loss of radioactive material (RAM), SWS has:
 - i. enhanced how the material is secured in company trucks during transport by welding the plate with the source holders to the truck frame, repairing the lock, and installing a heavy hasp lock to secure the door from opening during transport;
 - ii. provided training on NRC notification requirements;
 - iii. scheduled monthly conference calls with available site RSOs, Regional managers, and the Corporate RSO to discuss issues; and
 - iv. replaced the Corporate RSO.
 - b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS has:

- i. increased focus on vehicle radiological surveys during initial and annual employee training, and required documentation of the completion of this training;
- ii. implemented random audits and observations of vehicle radiation surveys by SWS management;
- iii. developed job aids for SWS employees on the use of radiation survey meters; and
- iv. reinforced to staff that falsification of survey readings would not be tolerated.

4. The NRC also acknowledged that since the October 21, 2010, letter, SWS has independently taken additional actions to enhance safety both within the company and the industry. Those actions include

- a. For the SL III Problem involving violations associated with the loss of RAM, SWS has:
 - i. discussed this event, and the lessons learned, with management representatives from other oilfield services companies;
 - ii. provided the details of this event to its radiological training contractors, Applied Health Physics (AHP), for inclusion as an example in its radiological training programs;
 - iii. instituted the corrective actions implemented at SWS's Buckhannon, WV facility at its other locations (within both NRC and Agreement State jurisdictions) that utilize similar sources, as well as enhanced security measures at those sites that use only portable moisture density gauges;
 - iv. instituted an audit protocol to be employed by the SWS Local Radiation Safety Officers (LRSOs), with oversight by the Health and Safety

Engineers, to review the radiological safety programs and prevent recurrence of this type of violation;

- v. provided training to the LRSOs on the audit protocol described in Item III.4.a.iv; and
- vi. instituted a practice that the Facility Operations Managers at the SWS wireline locations will also fulfill the role of the LRSOs.

b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS has:

- i. instituted the practice of the LRSOs conducting random audits of completed surveys to verify the recorded values are reasonable.

5. SWS has also agreed to take additional actions to address the violations, to further enhance safety both within the company and the industry. These actions consist of:

a. For the SL III Problem involving violations associated with the loss of RAM, SWS agreed to:

- i. provide presentations that discuss this event and SWS's lessons learned and corrective actions at the following forums:
 - 1. Pennsylvania Independent Oil and Gas Association;
 - 2. Oilfield Safety Alliance;
 - 3. Society of Petroleum Engineers;
- ii. submit an article discussing this event and SWS's lessons learned and corrective actions for consideration for publication in an Association of Energy Services Companies publication, a North American

Transportation Management Institute publication, and the Applied Health Physics (AHP) newsletter; and

- iii. provide the details of this event to AHP for inclusion as an example in its training program, which is provided to AHP's other related clients.

- b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS agreed to:

- i. modify its annual radiation training to emphasize that regulations and license conditions must be properly followed, including the requirements of providing complete and accurate information to the NRC (10 CFR 30.9) and the potential consequences that can occur to the company and to individuals who fail to comply; and
- ii. enhance the practice of the LSROs conducting random audits of completed surveys to verify the recorded values are reasonable (as discussed in Item III.4.b.i) by also periodically reviewing video footage of surveys being conducted.

- 6. SWS agreed to complete these actions within 90 days of the date of the Confirmatory Order confirming these commitments, and send the NRC Region I Regional Administrator a letter informing the NRC that the actions are complete, within 30 days of the completion of these actions.

- 7. In addition to the actions described above, SWS has instituted actions to enhance corporate safety culture. These include the implementation of anonymous employee safety concern feedback programs, routine employee observation tools, and other tools

that promote employee responsibility for safety and empower employees to raise safety concerns on the jobsite.

8. In light of the actions that SWS has taken as described in Items 3, 4, and 6, as well as the additional actions SWS committed to take as described in Item 5, the NRC agreed to reduce the amount of the civil penalty to \$17,000. SWS agreed to pay this amount within 30 days of the date of the Confirmatory Order confirming these commitments.
9. In accordance with NRC practice, the Confirmatory Order and the letter forwarding it to SWS will be publicly available and accompanied by a press release.

On February 4, 2011, SWS consented to issuance of this Order with the commitments, which are 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 SWS has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that SWS'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 SWS's consent, this Order is immediately effective upon issuance.

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 C.F.R. §2.202 and 10 C.F.R. Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT SWS SHALL:

- A. Within 30 days of the date of this order, pay a civil penalty of \$17,000, utilizing one of the payment methods described in NUREG/BR-0254, "Payment Methods."
- B. Within 90 days of the date of this order, complete the following actions:
 1. For the SL III Problem involving violations associated with the loss of RAM, SWS will:
 - a. provide presentations that discuss this event and SWS's lessons learned and corrective actions at the following forums:
 - i. Pennsylvania Independent Oil and Gas Association;
 - ii. Oilfield Safety Alliance;
 - iii. Society of Petroleum Engineers;
 - b. submit an article discussing this event and SWS's lessons learned and corrective actions for consideration for publication in an Association of Energy Services Companies publication, a North American Transportation Management Institute publication, and the Applied Health Physics newsletter; and
 - c. provide the details of this event to AHP for inclusion as an example in its training program, which is provided to AHP's other related clients.

2. For the SL III Problem involving two violations associated with the failure to perform surveys and creation of inaccurate survey records, SWS will:
 - a. modify its annual radiation training to emphasize that regulations and license conditions must be properly followed, including the requirements of providing complete and accurate information to the NRC and maintaining records that are complete and accurate in all material respects (10 CFR 30.9) and the potential consequences that can occur to the company and to individuals who fail to comply; and
 - b. enhance the practice of the LSROs conducting random audits of completed surveys to verify the recorded values are reasonable (as discussed in Item III.4.b.i) by also periodically reviewing video footage of surveys being conducted.
- C. Within 30 days of completion of all of the actions described in Section V.B. of this Order, send the Regional Administrator, NRC Region I, a letter confirming that all actions are completed and describe details of their completion.

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

VI

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the Federal Register. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the Federal Register. 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, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at

<http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 documents on

those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

If a person (other than SWS) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 C.F.R. 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 V above shall be final 20 days from the date this Confirmatory Order is published in the *Federal Register* 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 A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

William M. Dean, Regional Administrator
NRC Region I

Dated this the 8th day of February 2011