

April 18, 2013

EA-2012-189

Mr. David Barry, President
Chicago Bridge and Iron
128 South Tryon Street, Suite 400
Charlotte, NC 28202

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES
- \$36,400 (OFFICE OF INVESTIGATIONS REPORT NO. 2-2011-047)

Dear Mr. Barry:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) related to Chicago Bridge & Iron's (CB&I) facility in Charlotte, North Carolina, formerly known as Shaw Power Group and hereafter referred to as Shaw. The purpose of the investigation was to determine whether a former Shaw Nuclear Services, Inc. (SNS) employee, was the subject of employment discrimination for engaging in a protected activity. Specifically, the former employee notified Shaw, and was instructed by Shaw to notify Louisiana Energy Services (LES) that potentially faulty rebar may have been shipped to the LES facility by a rebar vendor.

In our letter dated October 19, 2012, the NRC notified Shaw that we identified an apparent violation of 10 CFR 52.5, "Employee protection," which we were considering for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, we provided Shaw the opportunity to address the apparent violation by: attending a predecisional enforcement conference, participating in alternative dispute resolution (ADR), or providing a written response before we made our final enforcement decision.

In a letter dated January 15, 2013, Pillsbury Winthrop Shaw Pittman LLP, legal counsel representing Shaw, provided a written response to the apparent violation. In the letter, Shaw contends that there were legitimate non-discriminatory reasons for the actions taken against the SNS employee. Shaw claims that the employee was terminated for a flagrant breach of Shaw's Code of Corporate Conduct because he transmitted confidential Shaw documents (draft audit findings) to a third party, specifically, LES. Shaw states that the transmittal of Shaw's confidential documents is, as a matter of law, not a protected activity for two independent reasons. First, raising a safety concern to a private third party entity that is not an individual's employer or a government authority is not a protected activity. Second, the transmittal of confidential information related to Shaw's audit of its rebar supplier to a third party was unreasonable because numerous, appropriate alternative avenues were available to the employee. Shaw's Code of Corporate Conduct states that "you are to keep all non-public information related to the Company or its business confidential" and "You shall not share with anyone any Company document or information that is not publically disclosed".

During a SNS audit of the rebar vendor's nuclear quality assurance program, the former SNS employee identified a non-conformance related to rebar and a potential issue concerning 10 CFR Part 21 reportability. When informed of these issues, the vendor responded that the issue did not meet reportability requirements because the items had not been shipped to their customer.

The NRC's investigation indicated that the SNS employee notified LES, an NRC licensee, of the rebar concern after he came upon evidence that the potentially faulty rebar had been shipped to LES. Further, the SNS employee was directed to do so by his direct supervisor, a Shaw official, after the employee informed his supervisor of the safety issue. The SNS employee's contact with LES was limited to addressing the potential safety issue with respect to rebar received by LES.

From the information gathered through the NRC's investigation and the information provided in your written response, the NRC believes that Shaw was concerned with the release of information rather than the content of the information or why it had been released. Shaw management apparently did not question either the former SNS employee or his direct supervisor regarding the reason for the release of the information; nor did they investigate whether the safety concern (potential faulty rebar) was a possible basis for the employee's conduct. Our conclusion is based on the fact that Shaw terminated the employee notwithstanding the fact that the employee communicated a safety concern to his management and contacted an NRC licensee at the direction of his supervisor.

In addition, we find that Shaw's Code of Corporate Conduct is overly restrictive or discourages employees from raising nuclear safety concerns. Whether or not the former SNS employee followed company policy, Federal law specifically prohibits discrimination against employees for raising safety issues or otherwise engaging in protected activities. Based on the above, the NRC concludes that two violations of NRC requirements occurred, which may have also contributed to a chilled work environment.

The first violation, involving employment discrimination, occurred on May 20, 2011, upon the termination of a former Quality Assurance Supervisor by an executive-level corporate manager for raising a nuclear safety concern. Specifically, the former employee notified Shaw and LES (at the direction of Shaw, albeit in a manner not conforming to the prescribed Shaw internal procedures for raising such safety concerns) of a potential 10 CFR Part 21 issue regarding selected heats of rebar that had failed the ASME bend test that may have been shipped to LES by a third party vendor. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in the redacted investigation report, which was issued as an enclosure to our October 19, 2012, letter.

To emphasize the importance of employee protection in accordance with NRC requirements and based on the severity of the adverse action taken, the level of management involved in the adverse action, and the potential to impact Shaw's Safety conscious Work Environment, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level II. See Enforcement Policy, Section 6.10. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$11,200 is considered for a Severity Level II violation.

In accordance with the civil penalty assessment process, Section 2.3.4 of the Enforcement Policy, both the *Identification* and *Corrective Action* factors are considered for Severity Level II

violations. The NRC determined that credit was not warranted for *identification* as the violation was identified by the NRC, rather than self-reported by Shaw. By our letter dated October 19, 2012, the NRC requested that if Shaw provided a written response that it should include the basis for disputing the apparent violation and the corrective steps it has taken or planned to avoid further violations. Shaw's response documented only the disagreement with the NRC preliminary conclusion and did not provide any corrective actions; thus, no credit was given for *Corrective Actions*. As a result, the civil penalty will be escalated by 100 percent. Therefore, to emphasize the importance of prompt identification and correction of violations, and a safety conscious work environment that is free of any chilling effect so that employees can bring forward nuclear and radiological safety concerns without fear of an adverse employment action, the NRC has decided to issue this violation in the enclosed Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$22,400, which is twice the base amount for the Severity Level II violation.

The second violation relates to the prohibitive language in Shaw's Corporate Code of Conduct which restricts, or otherwise discourages an employee from participating in a protected activity including notifying an NRC licensee of matters within the NRC's regulatory responsibility. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

In assessing the significance of this violation, the NRC considered that, although the Company has the right to protect confidential material, the Corporate Code of Conduct does not contain any provision that allows for the raising of nuclear safety concerns including, but not limited to, providing information to the NRC. In addition, this Policy was the basis for Shaw taking an adverse action as described above. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at a Severity Level III. See Enforcement Policy, Section 2.2.2. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a SL III violation.

Because Shaw has been the subject of escalated enforcement action within the last 2-years¹ or two inspections, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit was not warranted for *identification* as the violation was identified by the NRC, rather than self-reported by Shaw. Credit for corrective action is not warranted because Shaw did not provide any corrective actions in your January 15, 2013, response; thus, no credit was given for *Corrective Actions*. Therefore, to emphasize the importance of prompt identification and corrective actions of violations, the NRC has decided to issue this violation in the enclosed Notice and Proposed Imposition of Civil Penalty in the amount of \$14,000, which is twice the base amount for the Severity Level III violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC's review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

¹ EA-2010-054: On September 10, 2010, a Confirmatory Order was issued against S&W [a Shaw Group company] to confirm commitments made as a result of an ADR held on August 24, 2010

If you disagree with this sanction, you may either follow the instructions in the attached NOV or request ADR with the NRC. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and Shaw) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to supply one), will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

D. Barry

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Should you have any questions concerning this letter, please contact Russell Arrighi, Office of Enforcement, at (301) 415-0205.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalties
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/ encl: Geoffrey Grant, Shaw Power Group

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- 5 -

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ADAMS ACCESSION NUMBER: ML13050A597

OFFICE	OE	NRO/DCIP	OE/CRB
NAME	RArrighi	LDudes	DSolorio
DATE	4/12/2013	4/16/2013	4/15/2013
OFFICE	OE/EB	OGC	OE:D
NAME	NHilton	CHair	RZimmerman
DATE	4/15/2013	4/12/2013	4/18/2013

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

Chicago Bridge and Iron
Charlotte, NC

EA-12-189

Based on the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) Report 2-2011-047 and information obtained in a letter from the Shaw Power Group (Shaw) dated January 15, 2013, violations of NRC requirements were identified. In accordance with the Enforcement Policy, the NRC proposes to impose civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and Title 10 of the Code of Federal Regulations 2.205. The particular violations and associated civil penalties are set forth below:

- A. 10 CFR 52.5(a) prohibits discrimination by a Commission licensee, ... a contractor or subcontractor of a Commission licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The activities which are protected are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include, but are not limited to, reporting of safety concerns by an employee to his employer or the NRC.

Contrary to the above, on May 23, 2011, Shaw, a nuclear contractor, discriminated against one of its former employees (Quality Assurance Supervisor) for engaging in protected activities. Specifically, the individual was terminated, at least in part, for notifying Shaw and Louisiana Energy Service (at the direction of the individual's supervisor, a Shaw official), of a potential 10 CFR Part 21 issue regarding selected heats of rebar that had failed the ASME bend test that may have been shipped to the Louisiana Energy Service facility.

This is a Severity Level II violation (Section 6.10)
Civil Penalty - \$22,400.

- B. 10 CFR 52.5(f) specifies, in part, that no agreement affecting the compensation, terms, conditions, or privileges of employment, ... may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity ... including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

The Shaw Code of Corporate Conduct states, in part, that "You are to keep all non-public information relating to the Company or its business confidential. Such information may be released, as appropriate, on a need to know basis for business purposes. When

disclosed, the disclosure must be in accordance with applicable procedures such as confidential agreement. Confidential information includes the confidential and proprietary information of customers, vendors, ... with which the Company does business." "In some instances, there may be business justification for not complying with our internal control policies and procedures. However, those business justifications must be documented, and the appropriate approvals must be obtained."

Contrary to the above, as of May 23, 2011, Shaw's Code of Corporate Conduct restricts or otherwise discourages its employees from raising concerns including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

This is a Severity Level III violation (Section 2.2.2)
Civil Penalty - \$14,000

Pursuant to the provisions of 10 CFR 2.201, Shaw Power Group is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-12-189" and should include for the alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, (5) the date when full compliance will be achieved and (6) actions you have taken or planned to take to ensure that the matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization, and as discussed in NRC Form 3, to the NRC.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown, such as engaging in alternative dispute resolution.

Within the same time provided for the response required under 10 CFR 2.201, Shaw may pay the civil penalties proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should Shaw fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalties. Should Shaw elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation (if one is provided), and statement as to payment of civil penalties should be addressed to: Roy P. Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) to the extent possible, it should not include any personal privacy, proprietary information. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 18th day of April 2013