



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

March 2, 2004

EA-03-126  
NMED No. 011072

Mr. Michael Barton, Commissioner  
State of Alaska Department of  
Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801

SUBJECT: COMMITMENTS TO BE CONFIRMED BY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

Dear Mr. Barton:

A Confirmatory Order was discussed by the NRC and your staff during conference calls on February 5, 19, and 24, 2004, and during subsequent discussions between the NRC staff and your attorney, Mr. Gary Gantz. Based on our understanding of the commitments agreed to by the Alaska Department of Transportation & Public Facilities (ADOT&PF), the NRC has drafted the enclosed Confirmatory Order.

Please inform us whether ADOT&PF will consent to the enclosed draft Confirmatory Order by providing your written response to me at U.S. Nuclear Regulatory Commission, Mail Stop O14E1, 11555 Rockville Pike, Rockville, MD 20852, within ten working days of the date of this letter. If you consent to the Order, we request that you sign the enclosed Consent and Hearing Waiver form and return it to me at the above address. By signing the enclosed form, ADOT&PF agrees to have these commitments incorporated into a Confirmatory Order that will be effective immediately upon issuance and ADOT&PF will waive any and all rights to a hearing concerning the Order. After receiving your written consent, the NRC will issue the aforementioned Order.

Questions concerning this letter should be addressed to Doug Starkey, Office of Enforcement, who can be reached at 301-415-3456.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," documents compiled for enforcement purposes are normally placed in the NRC Public Electronic Reading Room (PERR) link at [www.nrc.gov/reading-rm/adams.htm](http://www.nrc.gov/reading-rm/adams.htm). The NRC will delay placing a copy of this letter with its enclosures into the PERR until the Confirmatory Order is issued.

Sincerely,  
**/RA/**  
Frank J. Congel, Director  
Office of Enforcement

Docket No. 030-07710  
License No. 50-14102-01

Enclosures:

1. Consent and Hearing Waiver Form
2. Draft Confirmatory Order

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## CONSENT AND HEARING WAIVER FORM

The Alaska Department of Transportation & Public Facilities hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, the Alaska Department of Transportation & Public Facilities consents to the issuance of the Confirmatory Order, effective immediately, with the commitments described in the NRC's letter dated March 2, 2004, and draft Confirmatory Order attached, and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), the Alaska Department of Transportation & Public Facilities waives the right to request a hearing on all or any part of the Order.

\_\_\_\_\_  
John MacKinnon, Deputy Commissioner

\_\_\_\_\_  
Date

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
State of Alaska Department of	)	Docket No. 030-07710
Transportation & Public Facilities	)	License No. 50-14102-01
Anchorage, Alaska	)	EA-03-126

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

The State of Alaska Department of Transportation & Public Facilities (ADOT&PF or Licensee) is the holder of NRC License No. 50-14102-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes ADOT&PF to possess and use certain licensed material in portable gauging devices that have been registered either with the NRC or with an Agreement State and have been distributed in accordance with an NRC or Agreement State specific license. The license was most recently amended on February 4, 2004, and is due to expire on November 30, 2011.

II

On January 3, 2002, the NRC's Office of Investigations (OI) started an investigation of ADOT&PF to determine if ADOT&PF's Statewide Radiation Safety Officer (SRSO) was the subject of discrimination for raising safety and compliance concerns. In OI Report No. 4-2002-001, OI concluded that the SRSO was the subject of discrimination. By letter dated July 17, 2003, the NRC identified to ADOT&PF an apparent violation of employee protection requirements (10 CFR 30.7) and the supporting bases for the NRC's concern. A predecisional enforcement conference was conducted with ADOT&PF on November 18-19, 2003. During the conference, ADOT&PF denied that any discrimination occurred and asserted that no violation of 10 CFR 30.7 occurred.

After considering the information from the investigation and the information ADOT&PF presented during the conference, the NRC has concluded that a violation of 10 CFR 30.7 occurred. Specifically, the NRC has concluded that ADOT&PF discriminated against its SRSO for engaging in protected activities as documented in a Notice of Violation issued to ADOT&PF on this date. Further, the NRC is concerned that ADOT&PF's Safety Conscious Work Environment <sup>1</sup> has deficiencies, and that ADOT&PF's actions to date have not been adequate to address these deficiencies.

By letters dated February 18 and \_\_\_\_\_, 2004, ADOT&PF reiterated its position that discrimination did not occur. Notwithstanding ADOT&PF's disagreement with the NRC's conclusions, ADOT&PF has agreed to address its compliance with NRC's Employee Protection regulations (i.e., 10 CFR 30.7) and the NRC's concerns about ADOT&PF's Safety Conscious Work Environment.

III

By letter dated \_\_\_\_\_, 2004, ADOT&PF has agreed to take actions to ensure compliance with 10 CFR 30.7 and to ensure it has established and will maintain a Safety Conscious Work Environment. The agreed-upon actions noted in Section IV of this Confirmatory Order focus on (1) ensuring that ADOT&PF's internal policies and procedures establish and will support a Safety Conscious Work Environment by providing for a review of these policies and procedures

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<sup>1</sup>NRC defines Safety Conscious Work Environment as a work environment in which employees feel free to raise safety and compliance concerns to its employer or to the NRC without fear of retaliation. The NRC issued a Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation on May 14, 1996 [61FR24336].

by individuals who are independent of ADOT&PF and who have subject-matter expertise;  
(2) developing a plan to conduct training of ADOT&PF employees and their supervisors and managers on NRC's Employee Protection regulations and on establishing a Safety Conscious Work Environment; and (3) developing a long-term plan for maintaining a Safety Conscious Work Environment that includes culture surveys and annual refresher training.

On \_\_\_\_\_, ADOT&PF consented to issuing this Confirmatory Order with the commitments as described in Section IV below. ADOT&PF further agreed in its \_\_\_\_\_ letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing on this Confirmatory Order. The NRC has concluded that its concerns can be resolved through effective implementation of ADOT&PF's commitments.

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

#### IV

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. 50-14102-01 IS MODIFIED AS FOLLOWS:

1. Within seventy-five (75) days from the date of this Confirmatory Order, ADOT&PF shall submit for NRC approval a plan to review ADOT&PF's internal policies and procedures pertaining to assuring compliance with NRC employee protection requirements (reference 10 CFR 30.7) and to establishing and maintaining a Safety Conscious Work Environment (reference "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," May 14, 1996 [61FR24336]). ADOT&PF shall complete the review within sixty (60) days from the date of NRC's approval of the plan.
  - (A) The plan shall include a discussion of the individual(s) who shall conduct the reviews. This discussion shall demonstrate that the individual(s) whom ADOT&PF selected have the expertise and capability to effectively conduct the reviews. The individuals shall meet the following criteria: (1) at least one individual shall have expertise in or prior experience in developing programs to assure compliance with NRC's Employee Protection regulations (e.g., 10 CFR 30.7, 40.7, or 50.7); (2) the individual(s) shall be knowledgeable regarding the Commission's May 1996 Policy Statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" [61FR24336]; (3) the individual(s) shall be independent of ADOT&PF; and (4) the individual(s) shall have expertise in the attributes of a Safety Conscious Work Environment as demonstrated by experience in evaluating or developing internal policies/procedures regarding a Safety Conscious Work Environment.
  - (B) The individual(s) above shall review and determine the adequacy of all ADOT&PF's policies and procedures regarding Safety Conscious Work Environment, including how ADOT&PF evaluates and resolves safety concerns while balancing other daily (production) duties. For any inadequacies that are

identified, the individual(s) shall provide ADOT&PF with written recommendations.

2. Within seventy-five (75) days from the date of this Confirmatory Order, ADOT&PF shall submit for NRC approval a plan to conduct initial training on the NRC's Employee Protection regulations and the attributes of a Safety Conscious Work Environment. The training shall commence within ninety (90) days from the date of NRC's approval of the plan, and the training shall be completed within ninety (90) days of commencing. The plan shall specify which ADOT&PF workers, supervisors and managers shall receive the training, and shall include provisions for individuals who miss the training due to unforeseen circumstances such as illness. At a minimum, the training shall be provided to workers involved in the use of licensed material and the radiation safety program, as well as the supervisors and managers of these individuals.
  - (A) The plan shall include a discussion of the individual(s) who shall conduct the training. This discussion shall demonstrate that the individual(s) selected by ADOT&PF have the expertise and capability to effectively conduct the training. The individuals shall meet the criteria specified in item 1.A above. The plan shall include a listing of training courses conducted by the individual(s) on NRC's Employee Protection regulations and on the topic of Safety Conscious Work Environment.
  - (B) ADOT&PF's plan shall include a description of the topics to be covered in the training course. The training shall include discussions of: (1) 10 CFR 30.7, including a discussion of protected activities and adverse actions; (2) applicable federal and state laws pertaining to whistleblower protection; (3) enforcement actions that may be taken against licensees and individuals who violate these

requirements; (4) the content of this Confirmatory Order; (5) establishing a Safety Conscious Work Environment; (6) the roles and responsibilities of the statewide and regional radiation safety officers in assuring compliance with NRC radiation safety requirements; and (7) what constitutes a hostile work environment and a “chilling effect.”

(C) The plan shall include additional training to supervisors and managers on how to effectively evaluate and resolve safety concerns, while balancing safety concerns with other daily activities, especially when dealing with conflicts in the work place. This training shall also discuss the specific responsibilities and obligations of supervisors and managers under NRC’s Employee Protection regulations and ADOT&PF’s internal policies and procedures.

3. Within 60 days of completing the review required by Condition 1 above, ADOT&PF shall submit for NRC approval a long-term plan for maintaining a Safety Conscious Work Environment. The plan shall include a discussion of the results of the review required by Condition 1 above, including a discussion of recommendations made by the individual(s) and ADOT&PF’s plan and schedule for addressing the recommendations. The long-term plan shall describe a procedure for evaluating and approving future changes to the plan. The long-term plan shall, at a minimum, address a time period through calendar year 2005. The plan shall include the following elements.

(A) ADOT&PF shall perform an employee cultural survey which is developed by a consultant or entity that is independent of ADOT&PF. The long-term plan shall specify which ADOT&PF workers, supervisors and managers shall be included in the survey. At a minimum, the survey instrument (i.e., questionnaire) shall be made available to workers, including temporary workers, involved in the use of

licensed material and the radiation safety program, as well as the supervisors and managers of these individuals. At a minimum, this survey shall be performed in calendar years 2004 and 2005. ADOT&PF shall provide the NRC with annual reports for the years 2004 and 2005 summarizing the findings of the cultural survey, including the questions used, the methodology applied, and any follow-up actions. The survey shall be conducted such that the individual employee responses shall be kept confidential from management.

- (B) ADOT&PF shall conduct annual refresher training of workers, including temporary workers, involved in the use of licensed material and the radiation safety program, as well as the supervisors and managers of these individuals. The long-term plan shall specify which ADOT&PF workers, supervisors and managers shall receive refresher training. No additional training in calendar year 2004 is needed beyond that required by Condition 2 above. Subsequent annual refresher training shall include a discussion of the NRC Employee Protection regulations and other applicable federal and state laws pertaining to whistleblower protection, ADOT&PF's policies and procedures for maintaining a Safety Conscious Work Environment, and the roles and responsibilities of the statewide and regional radiation safety officers in assuring compliance with NRC radiation safety requirements.
- (C) The refresher training conducted in calendar year 2005 shall be conducted by individual(s) independent of ADOT&PF who meet Condition 1.A above. ADOT&PF's plan shall specify the minimum qualifications for individuals (including ADOT&PF personnel) who may provide Safety Conscious Work Environment training in subsequent years.

- (D) ADOT&PF shall request an amendment to its license to require that its long-term plan for maintaining a Safety Conscious Work Environment be maintained and implemented. The license amendment request shall be submitted concurrent with submitting the long-term plan.

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

V

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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by

means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). 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 Confirmatory Order and propose at least one admissible contention, addressing the criteria set forth in 10 CFR § 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Frank Congel, Director  
Office of Enforcement

Dated this \_\_\_\_ day of \_\_\_\_ 2004