



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

March 15, 2004

EA-03-126

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

SUBJECT: NOTICE OF VIOLATION AND CONFIRMATORY ORDER MODIFYING  
LICENSE (EFFECTIVE IMMEDIATELY)  
(OI INVESTIGATION REPORT NO. OI-4-2002-001)

Dear Mr. Barton:

Enclosed are a Notice of Violation and a Confirmatory Order modifying your license effective immediately. The Notice of Violation documents our conclusion that, between 1999 and 2002, the State of Alaska Department of Transportation & Public Facilities (ADOT&PF) discriminated against its Statewide Radiation Safety Officer (SRSO) for raising safety and compliance concerns. The Confirmatory Order requires certain actions that ADOT&PF has agreed to take. As described below, the NRC believes the required actions are necessary to provide reasonable assurance that your organization establishes and maintains an environment where employees can raise safety concerns without fear of retaliation.

On November 18-19, 2003, the NRC conducted a predecisional enforcement conference with ADOT&PF. The November 19<sup>th</sup> portion of the conference dealt with an apparent violation of 10 CFR 30.7, the NRC's rule prohibiting discrimination against employees who engage in protected activities. Specifically, the NRC was concerned that ADOT&PF discriminated against its SRSO for raising potential safety and compliance concerns. This apparent violation had been discussed with your staff during a telephonic exit briefing on July 2, 2003, and was documented in a letter to ADOT&PF dated July 17, 2003. On October 15, 2003, other apparent violations involving radiation safety requirements (EA-03-190) were identified to ADOT&PF and were documented in an inspection report dated October 23, 2003. These other apparent violations were the subject of the conference on November 18, and will be the subject of separate correspondence.

During the November 19<sup>th</sup> portion of the conference, your staff's position was that it had not discriminated against the SRSO for raising safety concerns. Your staff stated that the SRSO had received adverse actions for his administrative problems and that there had been ongoing performance problems with your SRSO. During the conference, and reiterated in ADOT&PF's letter to the NRC dated December 5, 2003, ADOT&PF questioned the NRC's jurisdiction in this matter because of Eleventh Amendment concerns. Lastly, during the conference, ADOT&PF indicated that its staff does not have expertise in the area of NRC's employee protection regulations and asked for our help. ADOT&PF looked to the NRC for guidance as to appropriate action to correct the situation.

In response to ADOT&PF's questions regarding Eleventh Amendment concerns, the NRC has jurisdiction to take enforcement action against state governmental licensees for violations of 10 CFR 30.7. The Atomic Energy Act authorizes the NRC to take enforcement action against NRC licensees who discriminate against employees who raise safety concerns. See *Union Electric Company (Callaway Plant Units 1 & 2)*, ALAB-527, 9 NRC 126, 133-139 (1979). This enforcement action is not an adjudication of a dispute between private parties and a non-consenting state. Sovereign immunity does not foreclose NRC investigation of alleged violations of NRC requirements, institution of NRC administrative proceedings, or enforcement action against state governmental licensees, for violation of NRC requirements, either upon the NRC's own initiative or upon information supplied by a private party. See *Federal Maritime Commission v. South Carolina State Ports Authority et al*, 535 U.S. 743 (2002).

Based on our review of the information developed during the NRC's Office of Investigations Report No. OI-4-2002-001, and the information that you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. Specifically, ADOT&PF took adverse actions against the SRSO, in part, because he raised concerns to his supervisors and managers about radiation exposures and other potential violations of NRC requirements. ADOT&PF contends that there were legitimate non-discriminatory reasons for the actions taken against the SRSO. The NRC, however, has concluded that in each instance listed in the Notice of Violation the adverse action was taken, at least in part, for discriminatory reasons and that some of the adverse actions were taken immediately after the SRSO engaged in protected activities. Based on the severity of the most significant adverse actions taken, the level of management involved in the adverse actions, and the potential impact to ADOT&PF's Safety Conscious Work Environment, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level II.

In accordance with the Enforcement Policy, a civil penalty was considered for this Severity Level II violation. However, in light of ADOT&PF's commitments to take extensive actions and to agree to the enclosed Confirmatory Order discussed below, the NRC is exercising discretion and refraining from issuing a civil penalty. In view of the Confirmatory Order, consent by the Licensee thereto as evidenced by the signed "Consent and Hearing Waiver Form" (copy enclosed) dated March 4, 2004, and subject to the satisfactory completion of the conditions of the Confirmatory Order by the Licensee, the NRC will not pursue further enforcement action for the enclosed Notice of Violation.

The NRC believes that this Confirmatory Order is necessary because ADOT&PF has not yet effectively resolved its problems in this area. The NRC has concluded that your staff discriminated against your SRSO for raising safety concerns. In this case, your SRSO raised legitimate issues to ADOT&PF management about radiation exposures to your employees whose assigned duties did not involve exposure to radiation or to radioactive material. Further, we noted that during the conference, statements by ADOT&PF representatives indicated that responsible licensee officials still did not fully understand NRC's Employee Protection requirements, i.e., 10 CFR 30.7. Effective implementation of the Confirmatory Order will allow your organization to comply with NRC's Employee Protection requirements and to establish an appropriate safety conscious work environment where radiation workers can feel free to raise safety concerns without fear of retaliation. Ineffective implementation of this Confirmatory Order may result in additional enforcement action up to and including revocation of your NRC

license. The Confirmatory Order was discussed between the NRC and your staff during several telephone conversations in February 2004, and by ADOT&PF's letters dated February 18 and March 4, 2004.

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 Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

Questions concerning this Confirmatory Order should be addressed to Doug Starkey, Office of Enforcement, at 301-415-3456.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," 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), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement**, then **Significant Enforcement Actions**. To the extent possible, your response to this Confirmatory Order should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,



Frank J. Congel, Director  
Office of Enforcement

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

Enclosures:

1. Predecisional Enforcement Conference Attendance List
2. Notice of Violation
3. Confirmatory Order
4. Copy of Consent and Hearing Waiver Form dated March 4, 2004

cc w/Enclosures: see next page

State of Alaska Department of  
Transportation & Public Facilities

4

State of Alaska Radiation Control Program Director

Mr. John MacKinnon  
Deputy Commissioner  
State of Alaska Department of  
Transportation & Public Facilities  
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Juneau, Alaska 99801

Mr. Michael San Angelo  
Statewide Materials Engineer  
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Ms. Billie P. Garde, Esq.  
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Clifford & Garde  
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Washington DC 20036

Mr. Doug Dasher  
Alaska Department of Environmental Conservation  
Northern Regional Office  
610 University Avenue  
Fairbanks, Alaska 99709

Mr. Gary Hogins  
Acting Chief Engineer  
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Mr. Robert L. Farmer  
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UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
 REGION IV  
 611 RYAN PLAZA DRIVE, SUITE 400  
 ARLINGTON, TEXAS 76011-4005

MEETING: State of Alaska Department of Transportation & Public Facilities

SUBJECT: Predecisional Enforcement Conference EA-03-126, EA-03-190

DATE/PLACE: November 18-19, 2003, Training Conference Room

**ATTENDANCE LIST**

NAME	ORGANIZATION	POSITION/TITLE
TONY BARTER	ALASKA DEPT OF TRANSP.	PROJECT MANAGER
TOM MOSS	AK DOT/PF	REGIONAL/CONST. ENGR.
ROBERT LEWIS	AK DOT & PF	QUALITY ASS. ENGR.
MICHAEL SAL ANCIELLO	AK DOT & PF	STEEL MATERIALS ENGR.
JOHN MacKINNON	AK DOT + PF	DEPUTY COMMISSIONER
GARY GANTZ	AK DOT + PF/AG	ASST ATTORNEY GENERAL
MICHAEL JOWNING	AK DOT + PF	FORMERLY - CHIEF ENGINEER
BRYCE L. RICH	QAL-TEK Assoc	VP - Radiation Safety CONSULTANT
DALE SNOWDER	QAL-TEK ASSOC.	PRES/CEO
GARY HOBINS	AK DOT/PF	ACTING CHIEF ENGR.



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SUBJECT: Predecisional Enforcement Conference EA-03-126, EA-03-190

DATE/PLACE: November 18-19, 2003, Training Conference Room

**ATTENDANCE LIST**

NAME	ORGANIZATION	POSITION/TITLE
Michael Vaggione	NRC RIV	Enforcement Specialist
JANINE F. KATONIC, Ph.D.	NRC RIV	Health Physicist
Mark R. Shaffer	NRC	Chief, NMIB
Elmo Collins	NRC	Dir. DNMS Region IV
Bruce Mallett	NRC, Region IV	Regional Administrator
Karla Smith	NRC/RIV	Regional <del>Administrator</del> <del>Specialist</del>
FRANK J. Congel	NRC/OE	Director, OE
ROBERT J. STALKEY	NRC/OE	ENFORCEMENT SPECIALIST
JONATHAN ARMENTA, JR.	NRC	OI: RIV, DIR.
Chick E. Wilkins	NRC	Chief, NMIB
Lew Williamson	NRC/OI	OI: RIV
CRYSTAL HOLLAND	NRC: OI	SPECIAL AGENT
Billie Garde	Clifford & Garde	Representative of Robert Farmer
Russell Wise	NRC/RIV	Senior Allegations Coordinator
ROBERT L. FARMER	RADIATION SAFETY OFFICER, STATE OF	
MICHAEL SAN ANGELO	STND MATERIALS ENGR.	ALASKA DEPARTMENT OF
Robert Lewis	AK DOT/PT QA Engr.	TRANSPORTATION AND
JOHN MacKinnon	AK DOT - DEPUTY Comm.	PUBLIC FACILITIES.
MICHAEL DOWNING	ALASKA DOT	FORMER CHIEF ENGINEER
GARY GANTZ	AK Attorney General's Office	Asst. Attorney General.

## NOTICE OF VIOLATION

State of Alaska Department of  
Transportation & Public Facilities  
Anchorage, Alaska

Docket No. 030-07710  
License No. 50-14102-01  
EA-03-126

During an NRC inspection and investigation which were concluded on July 17, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.7(a) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. Under 10 CFR 30.7(a)(1)(i), the activities that are protected include, but are not limited to, the reporting by an employee to the Commission or his employer information about alleged regulatory violations.

Contrary to the above, between 1999 and 2002, the State of Alaska Department of Transportation and Public Facilities (ADOT&PF), an NRC licensee, discriminated against one of its employees, the Statewide Radiation Safety Officer (SRSO) in violation of 10 CFR 30.7(a). Specifically the licensee retaliated against the SRSO for raising safety concerns regarding radiation exposures to ADOT&PF employees, by taking the following actions against the terms, conditions, or privileges of the SRSO's employment: In September 1999 a three month extension of the SRSO's probationary period; unacceptable ratings in performance appraisals for the periods 4/16/99 to 10/16/99, 1/16/00 to 1/15/01 and 1/16/01 to 1/5/02; denial of a merit increase for the year 2000; verbal admonitions by the SRSO's supervisor in September 1999 for breaking the chain of command and in November 2000 in connection with an evaluation of radiation exposure to Subject A; direction by the SRSO's supervisor in February 2000 to cease performance of radiation safety duties; a November 15, 2000, Letter of Expectation; an August 25, 2001, Letter of Instruction; direction by the SRSO's supervisor in November 2001 to sign a letter to the NRC stating that the SRSO's report of a radiation exposure beyond NRC limits was in error; in April 2002, a direction by the SRSO's supervisor to limit radiation safety duties to 8% of the SRSO's time; a May 7, 2002 Letter of Reprimand; denial of the SRSO's requests for radiation safety officer-related training; and in September 2002 directing the SRSO to provide confidential correspondence between the SRSO and the NRC.

This is a Severity Level II violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, the State of Alaska Department of Transportation & Public Facilities (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-03-126" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. 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 to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it 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, 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 withholding of such material, 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).

Dated this 15th day of March, 2004



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 March 4, 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 March 4, 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 March 4, 2004, ADOT&PF consented to issuing this Confirmatory Order with the commitments as described in Section IV below. ADOT&PF further agreed in its March 4, 2004 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

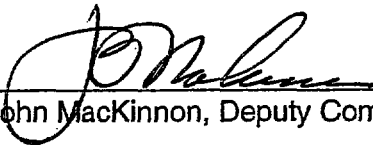


Frank Congel, Director  
Office of Enforcement

Dated this 15th day of March, 2004

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

03 04 04  
Date

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Collins - EEC	Whitten - JEW1
K Gardin	Shaffer - MRS
Cain - CLC	Spitzberg - DBS
J Katanic	McLean - MLM1
Campbell - VHC	OEMAIL
Neelam Bhalla - NXB	Michele Burgess - MLB5
Debby JacksonOEDO	J Armenta, OI
C Holland, OI	L Williamson, OI

ADAMS:  Yes     No    Initials: drs    G:/OECASES/Orders & NOVs/ADOT Conf. Order & Nov.wpd  
 Publicly Available     Non-Publicly Available     Sensitive     Non-Sensitive  
C:\WINDOWS\Profiles\drs\Desktop\ADOT Conf Order & NOV.wpd

ES	D:ACES	C:NMIB	D:DNMS	DRA
M Vasquez	G Sanborn	M Shaffer	E Collins	P Gwynn
/ RA /	/ RA /	/ RA /	/ RA /	/ RA /
2/19/04	2/19/04	2/26/04	2/23/04	3/1/04
RA	OGC	ES:OE	DD:OE	D:OE
B Mallet	D Dambly	D Starkey	J Luehman	F Congel
/ RA /	Longo for Dambly	<i>DRS</i>	<i>[Signature]</i>	<i>[Signature]</i>
3/2/04	3/4/04	<i>3-10-04</i>	<i>3-12-04</i>	<i>3/15/04</i>

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax