

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Mr. Kenneth J. Vandiver

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IA-08-006

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Kenneth J. Vandiver is employed as a radiographer at Alaska Industrial X-Ray, Inc. (AIX) located in Anchorage, Alaska, and until November 2007, Mr. Vandiver was the radiation safety officer (RSO) for AIX. AIX holds License No. 50-16084-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34 to conduct radiography. The license authorizes AIX to possess sealed radioactive sources for use in conducting industrial radiography activities in accordance with the conditions specified therein.

II

On June 4, 2007, an investigation was initiated by the NRC's Office of Investigations (OI), in part, to determine whether Mr. Vandiver, as RSO, engaged in deliberate misconduct by performing radiography with only one radiographer present at the Arctic Slope Regional Corporation Energy Services (ASRC) facility, a temporary jobsite. A predecisional enforcement conference (PEC) was held on June 5, 2008, with employees of AIX, including Mr. Vandiver, in an effort to obtain AIX's point of view on the violations.

Based on our review of the information obtained during the PEC and from the investigation, two violations of the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, were identified.

First, Mr. Vandiver engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) by causing AIX to be in violation of 10 CFR 34.41(a) when he conducted radiography alone at the ASRC facility on numerous occasions since about 2004. Second, he provided information that he knew was incomplete and inaccurate during his sworn statement to NRC investigators, in violation of 10 CFR 30.10(a)(2), on July 24, 2007, when Mr. Vandiver stated that he always abided by the two-person rule (10 CFR 34.41(a)), and that there had never been an occasion in which he conducted radiographic operations by himself. He also stated that to the best of his knowledge, as RSO, that AIX personnel were following the two-person rule. However, later on July 25, 2007, after the NRC had been informed by other radiographers and radiographer's assistants that he had performed radiography by himself at times at the ASRC site,

Mr. Vandiver admitted to violating the two-person rule. Mr. Vandiver also admitted to **having left** a radiographer alone at the ASRC site on occasions to conduct radiography while he returned to the Golovin site to develop film. During a third interview conducted on January 10, 2008,

Mr. Vandiver provided **substantially** the same information about his actions and the actions of other AIX radiographers in violation of the two-person rule.

Despite Mr. Vandiver's limited recollection during the PEC held June 5, 2008, we note Mr. Vandiver was aware of previous NRC enforcement action taken against AIX for the same violation at the same location.¹ In fact, Mr. Vandiver was a primary spokesperson for the

¹ On April 25, 2001, the NRC issued a Notice of Violation for a Severity Level III violation involving a failure to meet the requirements of 10 CFR 34.41(a) (EA-01-015).

company's position during the 2001 PEC with the NRC, and signed a memorandum in response to this violation indicating acknowledgement of the need to comply with the two-person rule.

The NRC has also concluded that Mr. Vandiver's deliberate misconduct is significant because he did not perform the duties of an RSO as described in 10 CFR 34.42. Specifically, as RSO he was responsible for ensuring that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program. In this case, not only did Mr. Vandiver deliberately violate 10 CFR 34.41(a), he was also aware that other AIX radiographers were deliberately violating this requirement and took no actions to stop it. Then, when questioned by the NRC, he knowingly provided incomplete and inaccurate information about the violations.

III

The NRC must rely on Licensees and their employees to act with integrity in complying with NRC requirements, and communicating with candor. In addition, the NRC has greater expectations for company managers, including radiation safety officers, to fulfill their required responsibilities in providing oversight of company activities to ensure that NRC requirements are followed. Mr. Vandiver's actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Vandiver will perform licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Vandiver were permitted at this time to be involved in NRC-

licensed activities. Therefore, the public health and safety interest require that Mr. Vandiver be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the date of this Order. Additionally, Mr. Vandiver is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1-year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Vandiver's conduct described above is such that the public health and safety interest require that this Order be immediately effective.

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, 10 CFR 30.10, and 10 CFR Parts 20, 34, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Kenneth J. Vandiver is prohibited for 3 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Vandiver is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 1-year after the 3-year period of prohibition has expired, Mr. Vandiver shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Vandiver shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

In accordance with 10 C.F.R. 2.202, Mr. Kenneth J. Vandiver must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Mr. Vandiver and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon

receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Vandiver requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.309(d).

If a hearing is requested by Mr. Vandiver or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Vandiver, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. 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 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.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 20th day of August 2008