



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

August 20, 2008

IA-08-007

Mr. Donald M. Millar
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-10346/07-01
AND INVESTIGATION REPORT NO. 4-2007-036)

Dear Mr. Millar:

This refers to the NRC inspection and investigation, which concluded on April 23, 2008, regarding your activities as a radiographer of Alaska Industrial X-Ray, Inc. (AIX) located in Anchorage, Alaska. The purpose of the investigation was, in part, to determine if you engaged in deliberate misconduct when performing radiography with only one radiographer present at the Arctic Slope Regional Corporation Energy Services (ASRC) site, a temporary jobsite.

On June 5, 2008, a predecisional enforcement conference was conducted with you in Anchorage, Alaska, to discuss the apparent violation, its significance, its root causes, and your corrective actions.

Based on the information developed during the inspection and investigation, and the information that you provided during the conference, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1). Although you initially believed that safety was not compromised by the violation of the two-person rule (10 CFR 34.41(a)) due to the way the ASRC jobsite had been set up, performing radiography without two qualified individuals present is significant because this regulation not only provides for a high level of assurance that members of the public will be prevented from entering the restricted area during those operations, but also provides additional protection for the radiographers should one of them become incapacitated while the source is unshielded. Your deliberate actions placed AIX in violation of 10 CFR 34.41(a) and you in violation of 10 CFR 30.10, "Deliberate Misconduct." Enclosure 2 includes a copy of the letter and Notice of Violation issued to AIX. Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Instead of providing a response to the Notice of Violation, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. 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. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and 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. 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. A request for ADR shall not stay the immediate effectiveness of this Order.

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 provide one, 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 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. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/reading-rm/doc-collections/enforcement/actions/. In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at www.nrc.gov/reading-rm/foia/privacy-systems.html.

Please feel free to contact Mr. Michael Vasquez of my staff at 817-860-8121 if you have any questions.

Sincerely,

/RA DDChamberlain for/

Elmo E. Collins
Regional Administrator

Enclosures:

1. Notice of Violation
2. Notice of Violation to Alaska Industrial X-Ray, Inc.
3. NUREG/BR-0317

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Marcia.Simon@nrc.gov
R4ALLEGATION

SUNSI Review Completed: GMV ADAMS: X Yes Initials: gmv
 X Publicly Available X Non-Sensitive

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Enf & Letters\Donald Millar_NOV.doc

RIV:ACES:SES	C:NMSB-A	D:DNMS	RC	DRA
GMVasquez	VHCampbell	ATHowell	KDFuller	CACasto
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07/31/08	08/5 /08	08/6/08	07/10/08	07/11/08
FSME	OGC	OE	RA	
MLBurgess	CMarco	NLHilton	EECollins	
/RA/	By K Sexton	/RA/ by E	/RA DDC for/	
08/14/08	08/13/08	08/20/08	08/20/08	

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION

Mr. Donald M. Millar
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

IA-08-007

During an NRC inspection conducted on June 4, 2007, and the subsequent investigation conducted by the NRC's Office of Investigations (OI), a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.10(a)(1) states, in part, that an employee of a licensee may not engage in deliberate misconduct that causes or would have caused a licensee to be in violation of any rule, regulation, or order.

10 CFR 34.41(a) states, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of § 34.43(c).

Contrary to the above, on multiple occasions since about 2004, Mr. Donald M. Millar, a radiographer employed by Alaska Industrial X-Ray, Inc. (AIX), engaged in deliberate misconduct that caused AIX to be in violation of 10 CFR 34.41(a). Specifically, Mr. Millar deliberately performed radiography, on multiple occasions, without being accompanied by at least one other qualified radiographer or an individual who had at a minimum met the requirements of §34.43(c) at the Arctic Slope Regional Corporation Energy Services (ASRC) site, a temporary jobsite.

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Mr. Donald M. Millar is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region IV, 612 East Lamar Blvd., Arlington, TX 76011-4125, and marked "Open by Addressee Only," 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; IA-08-007" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (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. 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 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 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at www.nrc.gov/reading-rm/foia/privacy-systems.html.

Dated this 20th day of August, 2008