



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

June 7, 2011

EA-10-231

Pete Millar, President
Alaska Industrial X-Ray, Inc.
4047 Kingston Drive
Anchorage, Alaska 99504

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY) (NRC INSPECTION REPORT 030-10346/2009-001 AND INVESTIGATION REPORT 4-2010-023)

Dear Mr. Millar:

The enclosed Confirmatory Order is being issued to Alaska Industrial X-Ray, Inc., as a result of a successful alternative dispute resolution session. The enclosed commitments were made by Alaska Industrial X-Ray, Inc., as part of a settlement agreement between Alaska Industrial X-Ray, Inc. and the U.S. Nuclear Regulatory Commission (NRC) concerning an apparent violation of the conditions of the Order Modifying License (EA-08-196) in the subject inspection report dated March 3, 2011.

In the March 3, 2011, inspection report, the NRC provided you with the results of an NRC inspection and an investigation conducted by the NRC's Office of Investigations. The report identified an apparent violation associated with two Conditions of the Order Modifying License (EA-08-196). The first condition identified was the failure to have an independent consultant or contractor perform field audits and submit the audit reports to Alaska Industrial X-Ray, Inc., and the NRC, as required by Condition 1 of the Order from August 2008 through March 2010.

The second condition was the failure to have an independent consultant or contractor evaluate the effectiveness of the Alaska Industrial X-Ray, Inc.'s, radiation safety program, as required by Condition 3 of the Order from September 2008 through October 2010. Our letter also informed you that the apparent violation was being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy. In addition, the NRC indicated that willfulness may have been involved in the apparent violation. A factual summary of the results of the investigation conducted by the Office of Investigations was enclosed with our March 3, 2011, letter.

In response to the letter dated March 3, 2011, you requested alternative dispute resolution. An alternative dispute resolution mediation session was held on April 19, 2011, at which a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Confirmatory Order.

Pete Millar

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The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form," (copy enclosed) dated June 1, 2011, you agreed to the issuance of this letter and Confirmatory Order. Upon issuance of this Confirmatory Order (Effective Immediately), the Order Modifying License (EA-08-196), dated August 20, 2008, is rescinded.

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.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it within 30 days to the U.S. Nuclear Regulatory Commission, Regional Administrator, Region IV, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125. 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 you have any questions or comments concerning this letter, please contact Mr. Ray Kellar at 817-860-8121

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's web site at <http://www.nrc.gov/reading-rm/adams.html>. The Confirmatory Order will also be published in the *Federal Register*. The NRC will also include this letter, and attached Confirmatory Order, on its web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html> under Significant Enforcement Actions.

Sincerely,



Elmo E. Collins
Regional Administrator

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc wo/enclosures:

Clyde E. Pearce, Radiological
Health Specialist
Chief, Radiological Health Program
State Laboratories
Department of Health and Social Services
4500 Boniface Parkway
Anchorage, AK 99507

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No.: 030-10346
Alaska Industrial X-Ray, Inc.)	License No.: 50-16084-01
Anchorage, AK)	EA-10-231

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Alaska Industrial X-Ray, Inc. (AIX or Licensee) is the holder of Materials License 50-16084-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30-36, 39, 40 and 70 and last amended on November 2, 2007, which expired on March 31, 2011. The license remains in effect while being reviewed by NRC licensing staff because AIX filed a timely licensee renewal application dated March 3, 2011. The license authorizes AIX to possess and use sealed radioactive sources in conducting industrial radiography activities in accordance with the conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on April 19, 2011, in Seattle, Washington.

II

On January 29, 2010, the NRC Office of Investigations (OI) began an investigation (OI Case number OI-4-2010-023) to determine if AIX willfully failed to comply with portions of NRC Order Modifying License (EA-08-196). NRC Order Modifying License (EA-08-196) included

requirements that AIX obtain an independent auditor to perform field audits of radiographic operations and that an independent consultant be hired by AIX to evaluate the effectiveness of the radiation safety and compliance programs. The OI investigation concluded that (1) from July 2009 through March 2010, AIX failed to ensure that unannounced field audits were conducted; (2) monthly reports of audit activities were not transmitted to the NRC during this same time period; and (3) an independent consultant failed to commence an assessment of the AIX radiation safety program, as required by NRC Order Modifying License, EA-08-196 (Order). The results of the OI investigation and NRC inspection were discussed with AIX during a telephonic exit on February 3, 2011, and were documented in NRC Inspection Report 030-10346/2009-001 and Investigation Report 4-2010-023, dated March 3, 2011.

On April 19, 2011, the NRC and Licensee representatives met in an ADR session in Seattle, Washington, mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement that resolves any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, the Licensee requested use of the NRC's ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the Nuclear Regulatory Commission Office of Enforcement's Alternative Dispute Resolution program (ADR), the following are the terms and conditions agreed upon in principle by Alaska Industrial X-Ray, Inc. (AIX) and the Nuclear Regulatory Commission (NRC) relating to the NRC's letter dated March 3, 2011 (EA-10-231).

Whereas, the NRC has concluded that willful violations were committed by AIX associated with failure to ensure that an independent contractor performed field audits and that an approved independent consultant began an evaluation of the effectiveness of the AIX radiation safety program as required by Conditions of NRC Order Modifying License (EA-08-196).

Whereas, the NRC considers willful actions to be a significant concern to the regulatory program and the NRC is interested in obtaining comprehensive corrective actions from AIX that would deter future willful violations and noncompliance with regulatory requirements.

Whereas, the NRC recognizes that AIX restored compliance with the license requirements, once the NRC brought the findings to AIX's attention; and AIX restored full compliance with the NRC Order Modifying License (EA-08-196) by October 28, 2010.

Whereas, the NRC recognizes that, based on the NRC's thorough inspection conducted between August and September 2010, AIX had improved its compliance with NRC regulations in that there were no findings involving the conduct of radiography; and that the NRC's findings were consistent with the auditor's findings that had been conducted prior to August 24, 2010;

Therefore, the parties agree to the following terms and conditions:

1. Within 60 days of the date of the ADR Confirmatory Order, AIX will contract with a person to provide training to all AIX employees engaged in licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. The training will also include instruction on what is meant by compliance to NRC orders and company procedures that provide direction to AIX personnel. The goal of the training is to deter future willful violations by ensuring AIX employees understand the importance upon which the NRC places on willful violations and compliance. The training will be completed within 120 days of the ADR Confirmatory Order.

- (a) The training will include the elements of willfulness discussed in the NRC Enforcement Manual (Chapter 6) and will include some examples of enforcement actions taken against individuals (which are publicly available on the NRC's website).

- (b) AIX will submit for NRC approval at least 30 days prior to the training, the resume of the contractor who will be conducting the training.

- (c) The training will include the willful issues discussed in the NRC's "Notice of Violation and Proposed Imposition of Civil Penalty - \$20,800 and Order Modifying License" issued to AIX on August 20, 2008, and the willful issues discussed in NRC Inspection Report 030-10346/2009-001 dated March 3, 2011.

(d) At least 14 days prior to the training, AIX will provide the NRC with an outline of the topics to be covered during this training session.

2. AIX will use an independent auditor to perform the annual review of its radiation safety and compliance program. The auditor will utilize the AIX RSO to assist during the review of the radiation safety program. The audits will use the guidance contained in NUREG 1556 (Volume 2), and include an audit of adherence to applicable security requirements by AIX. The first annual program review will be completed by February 15, 2012, for the calendar year 2011. The final annual program review will be completed by February 15, 2013, for the calendar year 2012.

(a) AIX will submit within 60 days of the date of this order the name of the independent auditor planned to perform the annual review.

(b) If AIX decides to use an auditor which the NRC has not previously approved, AIX must submit the auditor's resume to the NRC for approval prior to using the individual.

(c) The auditor will submit their findings to both AIX and the NRC simultaneously. Within 30 days after receiving the auditor's findings, AIX will submit to the NRC its response to the audit findings, including any corrective actions needed to address the auditor's findings.

3. From the date of the ADR Confirmatory Order until June 30, 2013, NRC management and AIX will conduct conference calls approximately six-month intervals to review audit and/or inspection results.
4. From the date of the ADR Confirmatory Order until June 30, 2013, the president of AIX or RSO shall perform quarterly audits of AIX radiographers as they conduct radiography. To the maximum extent possible, the audits shall include observations such that the crew cannot detect his presence. During these audits, the president of AIX or RSO must, to the extent possible, prevent violations from occurring or continuing as he observes the radiography crews, even in situations where the crew has not detected his presence prior to the violation. These audits must be separate and apart from any required audits performed for compliance with 10 CFR 34.43(e). Records shall be maintained documenting these audits and the results of the audits.
5. A Civil Penalty in the amount of \$1,000 will be assessed by the NRC.
6. This ADR confirmatory order will supersede the NRC Order Modifying License (EA 08-196).

On June 1, 2011, the Licensee consented to issuing this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

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

V

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 20, 34, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE 50-16084-01 IS MODIFIED AS FOLLOWS:

1. Within 60 days of the date of the ADR Confirmatory Order, AIX will contract with a person to provide training to all AIX employees engaged in licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. The training will also include instruction on what is meant by

compliance to NRC orders and company procedures that provide direction to AIX personnel. The goal of the training is to deter future willful violations by ensuring AIX employees understand the importance upon which the NRC places on willful violations and compliance. The training will be completed within 120 days of the ADR Confirmatory Order.

- (a) The training will include the elements of willfulness discussed in the NRC Enforcement Manual (Chapter 6) and will include some examples of enforcement actions taken against individuals (which are publicly available on the NRC's website).
 - (b) AIX will submit for NRC approval at least 30 days prior to the training, the resume of the contractor who will be conducting the training.
 - (c) The training will include the willful issues discussed in the NRC's "Notice of Violation and Proposed Imposition of Civil Penalty - \$20,800 and Order Modifying License" issued to AIX on August 20, 2008, and the willful issues discussed in NRC Inspection Report 030-10346/2009-001 dated March 3, 2011.
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- (d) At least 14 days prior to the training, AIX will provide the NRC with an outline of the topics to be covered during this training session.

- 2. AIX will use an independent auditor to perform the annual review of its radiation safety and compliance program. The auditor will utilize the AIX RSO to assist during the review of the radiation safety program. The audits will use the guidance contained in NUREG 1556 (Volume 2), and include an audit of adherence to applicable security requirements

by AIX. The first annual program review will be completed by February 15, 2012, for the calendar year 2011. The final annual program review will be completed by February 15, 2013, for the calendar year 2012.

(a) AIX to submit within 60 days of the date of this order the name of the independent auditor planned to perform the annual review.

(b) If AIX decides to use an auditor which the NRC has not previously approved, AIX must submit the auditor's resume to the NRC for approval prior to using the individual.

(c) The auditor will submit their findings to both AIX and the NRC simultaneously. Within 30 days after receiving the auditor's findings, AIX will submit to the NRC its response to the audit findings, including any corrective actions needed to address the auditor's findings.

3. From the date of the ADR Confirmatory Order until June 30, 2013, NRC management and AIX will conduct conference calls at approximately six-month intervals to review audit and/or inspection results.

4. From the date of the ADR Confirmatory Order until June 30, 2013, the president of AIX or RSO shall perform quarterly audits of AIX radiographers as they conduct radiography. To the maximum extent possible, the audits shall include observations such that the crew cannot detect his presence. During these audits, the president of AIX or RSO must, to the extent possible, prevent violations from occurring or continuing as he

observes the radiography crews, even in situations where the crew has not detected his presence prior to the violation. These audits must be separate and apart from any required audits performed for compliance with 10 CFR 34.43(e). Records shall be maintained documenting these audits and the results of the audits.

A Civil Penalty in the amount of \$1,000 will be assessed by the NRC.

This ADR confirmatory order will supersede the NRC Order Modifying License (EA-08-196).

The Regional Administrator, Region IV, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Licensee, may request a hearing within 20 days of its publication in the Federal Register. 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 20555-0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the

submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

If a person (other than Licensee) requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 C.F.R. 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 V above shall be final 20 days from the date this Confirmatory Order is published in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V 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

A handwritten signature in black ink, appearing to read "Elmo E. Collins". The signature is written in a cursive style with a large initial "E".

Elmo E. Collins
Regional Administrator

Dated this 7th day June 2011

CONSENT AND HEARING WAIVER FORM

Alaska Industrial X-Ray, Inc., hereby agrees to comply with the terms and conditions of the Confirmatory Order arising out of an alternative dispute resolution process to be issued relating to Enforcement Action EA-10-231. The Confirmatory Order will be immediately effective upon its issuance. By signing below, Alaska Industrial X-Ray, Inc., consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order.



Pete Millar
President
Alaska Industrial X-Ray, Inc.

6/11/2011
Date

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<u>Vivian.Campbell@nrc.gov;</u>	<u>Marisa.Herrera@nrc.gov;</u>	<u>Christian.Einberg@nrc.gov;</u>
<u>Jack.Whitten@nrc.gov;</u>	<u>Michele.Burgess@nrc.gov;</u>	<u>Russell.Arrighi@nrc.gov;</u>
<u>James.Thompson@nrc.gov;</u>	<u>Glenda.Villamar@nrc.gov;</u>	<u>Duane.White@nrc.gov;</u>
<u>Crystal.Holland@nrc.gov;</u>	<u>Vivian.Campbell@nrc.gov;</u>	<u>R4ALLEGATION.resource@nrc.gov;</u>

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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete		Reviewer Initials: RLK
<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive
Category -	KEYWORD: EA-10-231Confirmatory Order; AIX;				
ACES	BC:NMSB-A	RC	D:DNMS	DRA	
RKellar	VCampbell	KSFuller	RJCaniano	ATHowell	
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05/16/2011	05/10/2011	05/12/2011	05/16/2011	05/16/2011	
FSME	OGC	OE	RA		
MLBurgess	KSexton	NDHilton	EECollins		
/RA/via email	/RA/via email	/RA/via email	<i>tel</i>		
06/01/2011	06/01/2011	06/01/2011	<i>6/6/2011</i>		

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