

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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IA-12-009

Mr. James Chaisson

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CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

(NRC-2012-0216)

I

Mr. James P. Chaisson was employed from April 10, 2009, through April 30, 2010, as an area supervisor and lead radiographer for the Wyoming operations of Texas Gamma Ray, LLC (TGR or Licensee), whose corporate offices are located in Pasadena, Texas. TGR is the former holder of License No. 42-29303-01 issued on January 6, 2009, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 34. The license authorized industrial radiographic operations in accordance with conditions specified therein. The license was terminated at the licensee's request on July 25, 2011.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on July 26, 2012, at the Wallace F. Bennett Federal Building, Salt Lake City, Utah.

From June 4, 2009, through November 30, 2010, the NRC conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under TGR's former NRC license. In addition, the NRC's Office of Investigations (OI), Region IV, conducted two investigations (OI Report Nos. 04-2009-066 and 04-2011-034) to determine, in part, whether Mr. Chaisson: (1) deliberately stored radiographic exposure devices at a location he knew was not authorized by TGR's radioactive material license, and (2) deliberately failed to implement NRC security requirements for the use, storage, and protection of licensed material for radiographic operations.

By letter dated February 23, 2012, the NRC informed Mr. Chaisson that the NRC was considering escalated enforcement action for an apparent violation of the NRC's deliberate misconduct rule, 10 CFR 30.10. The NRC offered Mr. Chaisson the opportunity to request a predecisional enforcement conference (PEC), or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. During a March 19, 2012, conference call between Mr. Chaisson and NRC staff, Mr. Chaisson indicated that he was not interested in a PEC or ADR. Mr. Chaisson stated that he would, however, submit a written response to the NRC's February 23rd letter. On March 26, 2012, Region IV received a written response from Mr. Chaisson postmarked March 23, 2012.

On May 15, 2012, the NRC issued an Order to Mr. Chaisson based on a review of all the available information including Mr. Chaisson's March 2012 letter and the results of the inspection and OI investigations. The NRC concluded that Mr. Chaisson twice engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1). First, Mr. Chaisson engaged in

deliberate misconduct that caused Texas Gamma Ray, LLC (TGR), at the time an NRC licensee, to be in violation of License Condition 19 of its NRC Radioactive Material License, which required TGR to comply with NRC security requirements. Mr. Chaisson chose to store a radiographic exposure device at a leased facility on Elk Street in Rock Springs, Wyoming, even though he knew the facility did not comply with applicable NRC security requirements pertaining to the use, storage, and protection of licensed material. He periodically stored the radiographic exposure device at this location from December 2009 through April 30, 2010.

Second, by storing the radiographic exposure device at the Elk Street location, Mr. Chaisson engaged in deliberate misconduct that caused TGR, at the time an NRC licensee, to be in violation of License Condition 11 of its NRC Radioactive Material License, which required TGR to limit the storage of radioactive material approved on the license to temporary job sites in NRC jurisdiction. Specifically, Mr. Chaisson chose to store a radiographic exposure device at the leased facility on Elk Street in Rock Springs, Wyoming, even though he knew the facility was not an authorized storage location listed on the license.

The NRC's May 15, 2012, Order included the following requirements: (1) Mr. Chaisson was prohibited, for a 3 year period, from engaging in NRC-licensed activities that were conducted pursuant to a specific or general license issued by the NRC; (2) if Mr. Chaisson was currently involved in NRC-licensed activity as of the effective date of the Order, then Mr. Chaisson was required to immediately cease NRC-licensed activities and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of the Order to that employer; and (3) Mr. Chaisson was required for a period of 1 year, after the 3-year period of prohibition had expired, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, to provide the

name, address, and telephone number of the employer to the NRC's Director, Office of Enforcement.

Subsequent to the issuance of the NRC's May 15, 2012, Order, Mr. Chaisson requested to participate in the NRC's alternate dispute resolution (ADR) process. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement and resolving any differences regarding the dispute. On July 26, 2012, the NRC and Mr. Chaisson met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Mr. Chaisson requested use of the NRC's ADR process to resolve differences he 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 ADR program, the following are terms and conditions agreed upon in principle by Mr. James P. Chaisson, a former area supervisor and lead radiographer employed by Texas Gamma Ray LLC (TGR), and the Nuclear Regulatory Commission (NRC) relating to the 3-year ban imposed in the NRC's individual order (IA-12-009) to Mr. Chaisson dated May 15, 2012 (ML12137A311).

Whereas the NRC's inspection and investigations of TGR and Mr. Chaisson determined that Mr. Chaisson, while employed by TGR in Rock Springs, Wyoming, deliberately failed to comply with NRC regulations and TGR's license by storing a radiographic exposure device at a location not authorized on the license. In addition, Mr. Chaisson deliberately failed to implement one of NRC's security-related requirements.

Mr. Chaisson's actions constituted a violation of the NRC's deliberate misconduct rule, as defined under 10 CFR 30.10, which prohibits employees from engaging in deliberate misconduct which causes or would have caused if not detected, a licensee to be in violation of NRC requirements.

Whereas the NRC and Mr. Chaisson have agreed to disagree on whether Mr. Chaisson engaged in deliberate misconduct as discussed in the Order (IA-12-009) issued to Mr. Chaisson dated May 15, 2012 (ML12137A311).

Whereas the NRC considers deliberate violations by an individual in a position of authority (e.g., area supervisor or radiation safety officer) to be a significant concern to the regulatory program and the NRC is interested in obtaining comprehensive corrective actions from Mr. Chaisson that would deter future deliberate violations and noncompliance with regulatory requirements.

Whereas these terms and conditions shall not be binding on either party until these terms and conditions are memorialized in an Order issued by the NRC to Mr. James P. Chaisson.

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

A. Eighteen-Month Ban Followed by a Four-Year Limited Work Restriction.

1. Mr. James P. Chaisson is prohibited for an eighteen-month period 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. This means that during the eighteen-month prohibition period Mr. Chaisson is prohibited from performing, supervising, assisting or otherwise engaging in (1) industrial radiographic operations in NRC jurisdiction for an Agreement State licensee that are conducted under a general license pursuant to 10 CFR 150.20; (2) industrial radiographic operations for an NRC licensee including but not limited to, radiography conducted under the authority of a license issued pursuant to 10 CFR Part 34; and (3) any other licensed activity in NRC jurisdiction. This Confirmatory Order will supersede the Order previously issued to Mr. Chaisson dated May 15, 2012 (ML12137A311).
2. For a 4-year period after the eighteen-month ban has expired, Mr. Chaisson will notify NRC Region IV of any employment with an NRC licensee, within 3 days of each acceptance of employment with each NRC licensee. Mr. Chaisson will provide this notification by fax to the attention of the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, at the fax number 817-200-1188.

3. For a 4-year period after the 18-month ban has expired, in the situation where Mr. Chaisson works for an Agreement State licensee that provides notification to perform work in NRC jurisdiction, Mr. Chaisson shall personally, notify NRC Region IV in writing, each time prior to working in NRC's jurisdiction of the dates and specific location where he will be conducting NRC licensed activities. Notification will be made at least 3 days prior to working in NRC jurisdiction by fax to the Attention of the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, at the fax number 817-200-1188. Mr. Chaisson's notification must be independent of any notification required by the licensee pursuant to 10 CFR 150.20.

4. For a 4-year period after the 18-month ban has expired, Mr. Chaisson is prohibited from working for any NRC licensee as an Area Supervisor, Radiation Safety Officer, or in any other supervisory position (excluding radiographer) while in NRC jurisdiction. This includes the situation where Mr. Chaisson works for an Agreement State licensee performing work in NRC jurisdiction under reciprocity.

5. In order to ensure NRC licensees are aware of the limitations on Mr. Chaisson's NRC-licensed activities, for a 5^{1/2}-year period from the date of this Confirmatory Order, Mr. Chaisson must provide, at least 3 days prior to starting work, a copy of the Order to employers who are NRC licensees. This includes Agreement State licensees who perform work in the NRC's jurisdiction under reciprocity.

B. Individual Training.

1. Within 18 months of the date of this order, Mr. Chaisson shall successfully complete a 40-hour formal training course designed for qualifying radiation safety officers. The course must also include the requirements of the Increased Controls or Mr. Chaisson must attend a separate Increased Controls course. Within 10 days of completion of the required training, Mr. Chaisson shall provide a copy of the course completion certificates by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011.
2. Within 18 months of the date of this order, Mr. Chaisson shall successfully complete a 40-hour formal training course for Non-Destructive Testing that meets or exceeds the requirements in 10 CFR 34.43. Within 10 days of completion of the required training, Mr. Chaisson shall provide a copy of the course completion certificates by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011.

C. Written Article for NRC Review

Within 18 months of the date of this order, Mr. Chaisson agrees to submit an article by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, articulating the importance of compliance with NRC regulations and providing full and accurate information. The article may be included in a future newsletter issued by the Office of Federal and State Materials and Environmental Management Programs (FSME).

On August 30, 2012, Mr. James P. Chaisson consented to issuing this Order with the commitments, as described in Section V below. Mr. Chaisson further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Chaisson has agreed to the conditions 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 Mr. Chaisson'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 Mr. Chaisson's commitments be confirmed by this Order. Based on the above and Mr. Chaisson'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 30 and Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

A. Eighteen-Month Ban Followed by Four-Year Limited Work Restrictions

1. Mr. James P. Chaisson is prohibited for an 18-month period 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. This means that during the 18-month prohibition period Mr. Chaisson is prohibited from performing, supervising, assisting or otherwise engaging in (1) industrial radiographic operations in NRC jurisdiction for an Agreement State licensee that are conducted under a general license pursuant to 10 CFR 150.20; (2) industrial radiographic operations for an NRC licensee including but not limited to, radiography conducted under the authority of a license issued pursuant to 10 CFR Part 34; and (3) any other licensed activity in NRC jurisdiction. This Confirmatory Order will supersede the Order previously issued to Mr. Chaisson dated May 15, 2012 (ML12137A311).
2. For a 4-year period after the 18-month ban has expired, Mr. Chaisson will notify NRC Region IV of any employment with an NRC licensee, within 3 days of each acceptance of employment with each NRC licensee. Mr. Chaisson will provide this notification by fax to the attention of the Director, Division of Nuclear Materials Safety; U.S. Nuclear Regulatory Commission, Region IV, at the fax number 817-200-1188.
3. For a 4-year period after the 18-month ban has expired, in the situation where Mr. Chaisson works for an Agreement State licensee that provides notification to perform work in NRC jurisdiction, Mr. Chaisson shall personally notify NRC Region IV in writing, each time prior to working in NRC's jurisdiction of the dates and specific location where he will be conducting NRC licensed activities. Notification will be made at least 3 days

prior to working in NRC jurisdiction by fax to the Attention of the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, at the fax number 817-200-1188. Mr. Chaisson's notification must be independent of any notification required by the licensee pursuant to 10 CFR 150.20.

4. For a 4-year period after the 18-month ban has expired, Mr. Chaisson is prohibited from working for any NRC licensee as an Area Supervisor, Radiation Safety Officer, or in any other supervisory position (excluding radiographer) while in NRC jurisdiction. This includes the situation where Mr. Chaisson works for an Agreement State licensee performing work in NRC jurisdiction under reciprocity.
5. In order to ensure NRC licensees are aware of the limitations on Mr. Chaisson's NRC-licensed activities, for a 5½-year period from the date of this Confirmatory Order, Mr. Chaisson must provide, at least 3 days prior to starting work, a copy of the Order to employers who are NRC licensees. This includes Agreement State licensees who perform work in the NRC's jurisdiction under reciprocity.

B. Individual Training.

1. Within 18 months of the date of this order, Mr. Chaisson shall successfully complete a 40-hour formal training course designed for qualifying radiation safety officers. The course must also include the requirements of the Increased Controls or Mr. Chaisson must attend a separate Increased Controls course. Within 10 days of completion of the required training, Mr. Chaisson shall provide a copy of the course completion certificates

by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011.

2. Within 18 months of the date of this order, Mr. Chaisson shall successfully complete a 40-hour formal training course for Non-Destructive Testing that meets or exceeds the requirements in 10 CFR 34.43. Within 10 days of completion of the required training, Mr. Chaisson shall provide a copy of the course completion certificates by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011.

C. Written Article for NRC Review

Within 18 months of the date of this order, Mr. Chaisson shall submit an article by mail to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, articulating the importance of compliance with NRC regulations and providing full and accurate information. The article may be included in a future newsletter issued by the Office of Federal and State Materials and Environmental Management Programs (FSME).

Upon issuance of this Confirmatory Order, the Order Prohibiting Involvement in NRC-Licensed Activities, IA-12-009, dated May 15, 2012, is rescinded.

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

Any person adversely affected by this Confirmatory Order, other than Mr. James P. Chaisson, 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, 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 ten (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://ehd1.nrc.gov/ehd/>, 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 Mr. James P. Chaisson) requests a hearing, that person shall set forth with particularity the manner in which his 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.

Dated at Rockville, MD, this 10th day of September 2012

/RA/

Roy P. Zimmerman,

Director, Office of Enforcement