

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Michael M. Gibson
Dr. Gary S. Arnold

In the Matter of
JAMES CHAISSON
(Enforcement Action)

Docket No. IA-14-025-EA
ASLBP No. 14-932-02-EA-BD01
April 29, 2015

MEMORANDUM AND ORDER
(Rescheduling Prehearing Conference
and Suspending Evidentiary Hearing Schedule)

In an April 21, 2015 issuance, the Licensing Board noted that (1) pending before the Board is an April 17 joint motion requesting that the Board (a) approve an agreement by the parties to settle this case, and (b) terminate this proceeding; and (2) prior to making a determination regarding that motion, the Board wished to conduct a brief telephone conference with the parties. See Licensing Board Memorandum and Order (Rescheduling Telephone Conference) (Apr. 21, 2015) at 1 (unpublished) [hereinafter Rescheduling Order]. In addition, the Board indicated that it had tried to schedule that telephone conference for April 21-22, but because hearing requestor James Chaisson had not responded to the e-mails and telephone messages from Licensing Board law clerk Matthew Zogby regarding his availability, the Board was now seeking to reschedule the conference for April 28 or 30, or May 1. See id. at 1-2. Also, because the Board understood that Mr. Chaisson may have been having some difficulty with his e-mail and telephone service, the Board had this issuance served by overnight delivery. See id. at 3 n*. Unfortunately, despite again being contacted by Mr. Zogby repeatedly via e-mail

and telephone messages regarding his availability on those dates, Mr. Chaisson has once more failed to provide the Board with any information regarding his availability for a conference call on April 28 or 30, or May 1.¹

We thus once again need to reschedule the telephone conference, now to the week of May 4. In this regard, the Board is available for a telephone conference at 11:00 a.m. Eastern Time (9:00 a.m. Mountain Time) on either Tuesday, May 5, Wednesday, May 6, or Thursday, May 7, and requests that the parties promptly contact Mr. Zogby (e-mail: matthew.zogby@nrc.gov; telephone: 301-415-5880) regarding their availability on these dates/times.²

And to ensure that there is no confusion on Mr. Chaisson's part about what we are requesting and why it is important, we note the following: Because a hearing notice has been issued in this proceeding, under 10 C.F.R. § 2.338(i), for the parties' settlement agreement to be effective, it must be approved by the Board. See Licensing Board Memorandum (Suspending Prehearing Conference and Requesting Status Report on Settlement Agreement) (Apr. 6, 2015) at 1 (unpublished). Further, as a part of its consideration of, and as a prerequisite to ruling on, the parties' joint motion for approval of the settlement agreement, the Board wants to conduct a telephone conference to discuss the agreement in which both Mr.

¹ As was the case in the previous instances, the staff has provided the Board with information regarding its availability for the proposed telephone conferences. See Rescheduling Order at 1.

The Board also notes that Mr. Chaisson has been advised by e-mail/telephone message that he needs to provide the Board with notice of his availability 24 hours before the particular date so the Board has time to arrange for a court reporter and a telephone bridge line.

² Even if Mr. Chaisson is not available on these times/date, he nonetheless should contact Mr. Zogby promptly and discuss with him what near term alternate dates and times would be workable.

Chaisson and the NRC staff must participate.³ Additionally, if the Board schedules a prehearing conference in which Mr. Chaisson needs to participate and he does not appear, he places himself in jeopardy of having a default entered against him, which ultimately could have the effect of nullifying the settlement agreement and having the staff's July 2014 order become the operative directive with which Mr. Chaisson would have to comply. See 10 C.F.R. § 2.320.⁴

Finally, as we indicated in our April 17 issuance, the dates in the March 31 evidentiary hearing schedule for the parties to make their evidentiary hearing filings are still operative, the first being this Friday, May 1. See Rescheduling Order at 2. Under the circumstances, having the parties, and particularly the staff, submit their potentially voluminous evidentiary material

³ Among the items the Board wishes to discuss during the prehearing conference is the chart included as Attachment A to this issuance, which outlines the provisions of the settlement agreement in a way that Mr. Chaisson may find somewhat easier to track. The Board is interested in having the parties' views on whether this chart accurately reflects the provisions of the parties' settlement agreement (including what modifications the parties would propose) and whether, if the Board ultimately issues a determination approving the settlement agreement, there would be any objection to including the chart as an attachment, along with the agreement itself.

⁴ In this regard, the Board notes that in the event of a default, a licensing board is authorized, among other things, to proceed without further notice to begin taking proof regarding the issues specified in the proceeding. See 10 C.F.R. § 2.320(b).

would be neither a fair nor efficient use of resources. Therefore, the Board suspends the balance of the evidentiary hearing schedule pending a further directive from the Board.⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 29, 2015

⁵ The staff filed an motion yesterday to stay this proceeding, see NRC Staff Motion to Stay Proceeding Pending Settlement (Apr. 28, 2015) at 1, but this determination moots that request.

⁶ In addition to being served by e-mail, a copy of this memorandum and order is being sent today to Mr. Chaisson by overnight express service at his home address in Orem, Utah.

ATTACHMENT A

<p>Summary of April 14, 2015 NRC Staff/James Chaisson Settlement Agreement Terms</p>		
<p>1. <u>Work Restriction Pending Completion of Certain Requirements</u>. While in NRC jurisdiction, James Chaisson is restricted to performing work as a radiographer’s assistant (i.e., he is not to perform work as a radiographer and must perform his work under the supervision of a certified radiographer) until he successfully completes the following three requirements:</p>		
<p>a. <u>Meeting with NRC Staff Regarding Compliance with NRC Regulations</u>: Mr. Chaisson must meet in person with NRC staff representatives at the Region IV office in Arlington, Texas, or a mutually agreed alternative location to review and discuss the importance of compliance with NRC regulations, with an emphasis on industrial radiography.</p>	<p>b. <u>Training</u>: Mr. Chaisson must complete a 40-hour formal training course designed for radiation safety officer (RSO) qualification (or demonstrate he has done so within the past 18 months (i.e., on or after October 14, 2013)) that includes training on security requirements in 10 C.F.R. Part 37.</p> <p>If the RSO course does not include NRC security requirements instruction, Mr. Chaisson must attend a separate course on Part 37 requirements.</p> <p><u>Post-training Notification Requirement</u>: Within 10 days of completing the training course(s), Mr. Chaisson must mail a copy of the course completion certificate(s) (or similar proof of attendance) to the Director, Division of Nuclear Safety, NRC Region IV (per the address in section 5 below).</p>	<p>c. <u>Observation</u>: Mr. Chaisson must “shadow” and observe an RSO for a minimum of 40 hours as the RSO performs radiation program safety oversight for a radiography company. At a minimum, observations must include the RSO conducting audits of (1) at least three different crews performing field work activities at temporary jobsite(s); (2) a radiography camera storage location, including the storage location security system; and (3) a radiography truck security system.</p> <p><u>Observation Pre-approval Requirement</u>: Prior to RSO shadowing, Mr. Chaisson must request and receive NRC approval of the RSO he proposes to observe by sending an e-mail or mail request to the Director, Division of Nuclear Safety, NRC Region IV (per the addresses in section 5 below).</p> <p><u>Post-observation Notification Requirement</u>: Upon completing the above-listed observations, Mr. Chaisson must notify the Director, Division of Nuclear Safety, NRC Region IV, by e-mail or in writing (per the addresses in section 5 below) of the dates of, and details about, the observations.</p>

2. Limited Work Restrictions: For the period through April 14, 2018, James Chaisson is subject to the following five restrictions:

a. Quarterly Activity Summary: Once during each quarter of the year (i.e., January-March, April-June, July-September, October-December), Mr. Chaisson must contact NRC Region IV via e-mail (per the address in section 5 below), and provide a brief summary of his engagement in NRC-license activities that (1) includes an overview of the activities he completed during the previous quarter; and (2) identifies known or intended work projections and locations for the next quarter.

Definition of "NRC-licensed activities": Those activities (1) that are conducted pursuant to an NRC-issued specific or general license (e.g., industrial radiographic operations conducted pursuant to 10 C.F.R. Part 34); or (2) of Agreement State licensees conducted pursuant to 10 C.F.R. § 150.20.

b. Prior Notification of Employment with NRC Licensee: Mr. Chaisson must notify the Director, Division of Nuclear Safety, NRC Region IV, via e-mail (per the address in section 5 below) of any employment with an NRC licensee.

Notification Timing: Notification to the Director, Division of Nuclear Safety, NRC Region IV, must be given within 3 days of accepting such employment.

c. Notification of Employment Prior to Working in NRC Jurisdiction with Agreement State Licensee: Mr. Chaisson must notify the Director, Division of Nuclear Safety, NRC Region IV, via e-mail (per the address in section 5 below) prior to working in NRC jurisdiction when he is employed by an Agreement State licensee that notifies NRC of its intent to perform work in NRC jurisdiction.

Notification Requirements: Mr. Chaisson's notification to the Director, Division of Nuclear Safety, NRC Region IV, must (1) be separate and apart from the NRC notification provided by the Agreement State licensee; and (2) include the dates and specific locations where Mr. Chaisson will be conducting NRC-licensed activities.

Notification Timing: Notification to the Director, Division of Nuclear Safety, NRC Region IV, must be given at least 3 days prior to working in NRC jurisdiction.

d. Prior Notification to NRC or Agreement State Licensee About Settlement Agreement: Prior to starting work, Mr. Chaisson must provide a copy of the April 14, 2015 settlement agreement to any NRC licensee or any Agreement State licensee that conducts activities pursuant to 10 C.F.R. § 150.20.

Notification Timing: Notification to an NRC or Agreement State licensee must be given at least 3 days prior to starting work for an NRC or Agreement State licensee.

e. Prohibition on Working in Certain Capacities: Mr. Chaisson is prohibited from working while in NRC jurisdiction for (1) an NRC licensee; or (2) an Agreement State licensee performing work in NRC jurisdiction under reciprocity, in the following capacities:

1. Manager, Area Supervisor, any other position providing supervision or oversight of industrial radiographic operations;
2. RSO; and
3. Instructor of industrial radiographic operations.

3. Penalties: James Chaisson's failure to (1) abide by any of the requirements listed above, including submitted a timely request for extension, relaxation, or recession of those requirements per the provision below; or (2) comply with NRC requirements, regulations, or license conditions while engaged in NRC-licensed activities (per the definition in section 2.a. above) allows the NRC to issue an order prohibiting him from engaging in all NRC-licensed activities for a period up to a lifetime ban.

4. Requests to Extend, Relax, or Rescind Settlement Agreement Provisions: Upon a showing of good cause by James Chaisson, the Director, NRC Office of Enforcement, may extend, relax, or rescind any settlement agreement provision.

Transmitting Extension, Relaxation, or Rescission Request: A request to extend, relax, or rescind must be in writing and must be sent by e-mail or mail to the Director, NRC Office of Enforcement (per the addresses in section 5 below).

Timing of Extension, Relaxation, or Rescission Request: A request to extend, relax, or rescind will not be considered if received by the NRC staff after the deadline involved.

5. Contact Information:

E-Mail (in all instances): EA-14-222@nrc.gov

Mail:

To Director, Division of Nuclear Materials Safety, NRC Region IV:

Director
Division of Nuclear Materials Safety
U.S. Nuclear Regulatory Commission, Region IV
1600 E. Lamar Blvd.
Arlington, Texas 76011-4511

To Director, NRC Office of Enforcement:

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Telephone: Contact Director, NRC Region IV Division of Nuclear Materials Safety, at 817-200-1106

Facsimile: 817-200-1188

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Mr. James Chaisson) IA-14-025-EA
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(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Rescheduling Prehearing Conference and Suspending Evidentiary Hearing Schedule)** have been served upon the following persons by Electronic Information Exchange or via Electronic Mail where indicated by an asterisk.

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[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of April, 2015