

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
June 4, 2015

MEMORANDUM AND ORDER
(Scheduling Teleconference and Requesting Information
Regarding Settlement Agreement)

In a June 3, 2015 submission the NRC staff has advised the Licensing Board that hearing requestor James Chaisson is available next week for a telephone conference to discuss the pending April 17, 2015 motion filed jointly by Mr. Chaisson and the staff requesting that the Board approve the attached April 14, 2015 settlement agreement between the parties and terminate this proceeding. See NRC Staff Notice of [Availability] of Parties to Schedule Teleconference (June 3, 2015); see also Joint Motion to Approve Settlement Agreement and Terminate Proceeding (Apr. 17, 2015) attach. A (Settlement Agreement Between U.S. Nuclear Regulatory Commission and James P. Chaisson (Apr. 14, 2015)) [hereinafter Settlement Agreement]. Per the representations in the staff's June 3 filing regarding the parties' availability, the Board will convene a telephone conference with the parties on Wednesday, June 10, 2015, at 11:00 a.m. Eastern Time (9:00 a.m. Mountain Time).¹

¹ Each party will be contacted by Board law clerk Matthew Zogby regarding the
(continued...)

During the conference call, the parties should be prepared to discuss with the Board several items regarding the April 2015 settlement agreement. These include:

1. Which terms of the settlement agreement fulfill each of the four requirements of 10 C.F.R. § 2.338(h).²
2. Whether the parties have any objections/corrections to the draft summary of the settlement agreement's terms that was provided as an attachment to the Board's April 29, 2015 issuance.³ See Licensing Board Memorandum and Order (Rescheduling Prehearing Conference and Suspending Evidentiary Hearing Schedule) (Apr. 29, 2015) attach. A (unpublished).

¹(...continued)

telephone number and pass code for the prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Mr. Zogby for the requisite information at 301-415-5880 or matthew.zogby@nrc.gov.

² Subsection (h) of section 2.338 states that a proposed settlement agreement must contain the following four items:

- (1) An admission of all jurisdictional facts.
- (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise contest the validity of the consent order;
- (3) A statement that the order has the same force and effect as an order made after full hearing; and
- (4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

10 C.F.R. § 2.338(h).

³ In the interests of efficiency and accuracy, the parties are requested to provide a joint filing setting forth any objections/proposed corrections to the draft summary of settlement agreement terms on or before Tuesday, June 9, 2015.

3. Relative to the April 2015 settlement agreement's terms:
 - a. Whether, and how, does the work restriction in paragraph 1.a of the settlement agreement, see Settlement Agreement at 1, differ from that imposed in paragraph IV.1 of the staff's July 2014 enforcement order, see In the Matter of James Chaisson, 79 Fed. Reg. 42,057, 42,058–59 (July 18, 2014).
 - b. Whether, and how, does the staff review provision of paragraph 1.a.i of the settlement agreement, see Settlement Agreement at 1, differ from the staff review provision in paragraph IV.3.b of the staff's July 2014 enforcement order, see 79 Fed. Reg. at 42,059.
 - c. Whether, and how, do the training requirements of paragraph 1.a.ii of the settlement agreement, see Settlement Agreement at 2, differ from the training provisions of paragraph IV.3.a of the staff's July 2014 enforcement order, see 79 Fed. Reg. at 42,059.
 - d. Under paragraph 1.a.iii of the settlement agreement regarding shadowing a radiation safety officer (RSO), see Settlement Agreement at 2–3, (1) how much in advance does Mr. Chaisson need to submit his request to NRC Region IV for approval of an RSO; (2) what knowledge/information regarding safe radiographic operations does the staff anticipate Mr. Chaisson will acquire relative to each of the specific audits listed in paragraph 1.a.iii; and (3) what are the parties' expectations about the difficulty that Mr. Chaisson will have in fulfilling the shadowing requirement in light of the specific audits listed in paragraph 1.a.iii.

- e. What are the first and subsequent due dates for Mr. Chaisson's quarterly summaries required under paragraph 2.a.i of the settlement agreement, see id. at 3.
 - f. Whether, and how, does the prohibition on working for an NRC licensee in certain specified positions in paragraph 2.a.v of the settlement agreement, see id. at 4, differ from the prohibition in paragraph IV.4.c of the staff's July 2014 enforcement order, see 79 Fed. Reg. at 42,059.
 - g. How long does the penalty provision of paragraph 3 of the settlement agreement apply relative to a purported failure by Mr. Chaisson "to comply with NRC requirements, regulations, or license conditions while engaged in NRC-licensed activities," Settlement Agreement at 4, i.e., assuming Mr. Chaisson timely complies with the other provisions of the settlement agreement, what is the last date upon which this provision could be the authorizing basis for the staff "to issue an order prohibiting him from engaging in all NRC-licensed activities for a period up to a lifetime ban," id.
- 4. Whether Mr. Chaisson was obligated under the Atomic Energy Act (AEA) or the agency's implementing regulations to disclose to the agency his recent criminal conviction, which did not arise under his work as a radiographer.⁴
 - 5. Whether the Board is obligated to consider Mr. Chaisson's recent criminal conviction, which did not arise under his work as a radiographer, in approving or

⁴ In responding to this item, the Board would be interested in hearing from the staff regarding whether the AEA or NRC rules/policies/guidance impose any duty on a radiographer, or a company for which he/she is working, to disclose to the agency any criminal charge or conviction entered against a radiographer while he/she is employed as, or is the subject of an NRC enforcement action regarding his/her activities as, a radiographer.

disapproving the parties' April 2015 settlement agreement under the four-part findings the Board must make in accord with 10 C.F.R. § 2.338(i).⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 4, 2015

⁵ Agency case law indicates that in making a settlement agreement approval determination, a presiding officer is to consider:

(1) whether, in the view of the agency's original order and the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation.

Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 209 (1997).

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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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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 (Scheduling Teleconference and Requesting Information Regarding Settlement Agreement)** 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 Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 4th day of June, 2015