

NUCLEAR REGULATORY COMMISSION

IA-16-026; NRC-2016-XXXX]

In the Matter of Kyle Lynn Dickerson

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a confirmatory order to Kyle Lynn Dickerson confirming agreements reached in an Alternative Dispute Resolution mediation session held on June 3, 2016. As part of the agreement, Mr. Dickerson has completed and will complete future agreed upon actions within 18 months of the issuance date of the confirmatory order.

DATES: The confirmatory order was issued on July 11, 2016.

ADDRESSES: Please refer to Docket ID: NRC-2016-XXXX when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-XXXX. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For questions about the Order, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection

at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Kramer, Region IV, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 817-200-1121; e-mail: John.Kramer@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Arlington, Texas, this 11th day of July 2016.

For the Nuclear Regulatory Commission.

/RA/

Kriss M. Kennedy,
Regional Administrator.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of Kyle Lynn Dickerson
IA-16-026

Confirmatory Order

I

Mr. Kyle Lynn Dickerson is a radiographer employed by Acuren USA in Kenai, Alaska. Acuren USA is the holder of license 50-32443-01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30 on December 17, 2012.

This Confirmatory Order is the result of an agreement reached between Mr. Dickerson and the NRC during an alternative dispute resolution (ADR) mediation session conducted on June 3, 2016.

II

On August 21, 2014, the NRC's Office of Investigations, Region IV Field Office, initiated an investigation to determine if radiographers assigned to the Acuren USA facility in Kenai, Alaska, willfully conducted radiographic operations without maintaining direct visual surveillance of the operation and without the proper postings. The investigation was completed on August 17, 2015, and was documented in NRC Investigation Report 4-2014-043.

Based on the evidence developed during the investigation, the NRC has concluded that a violation of 10 CFR 30.10(a)(1) occurred. Specifically, on April 10, 2014, Mr. Dickerson caused Acuren USA to be in violation of 10 CFR 34.51 and 10 CFR 34.53 by performing

industrial radiographic operations without conspicuously posting the area with radiation area and high radiation area signs, and without maintaining continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area.

In a letter dated March 24, 2016 (ML16085A082), the NRC notified Mr. Dickerson of the results of the investigation, informed Mr. Dickerson that escalated enforcement action was being considered for an apparent violation, and provided Mr. Dickerson the opportunity to attend a predecisional enforcement conference or to participate in an ADR mediation session in an effort to resolve the concern. In response to the NRC's offer, Mr. Dickerson requested the use of the NRC's ADR process to resolve differences Mr. Dickerson had with the NRC. On June 3, 2016, the NRC and Mr. Dickerson met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative dispute resolution is a process in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, Mr. Dickerson and the NRC reached a preliminary settlement agreement. The elements of the agreement recognized corrective actions that Mr. Dickerson already completed as described below and included future agreed upon actions as follows:

Corrective actions taken by Mr. Dickerson included:

- A. Repeated annual refresher training, which included the following topics:
 - 1. Changes to Acuren USA Operating and Emergency Manual.
 - 2. Changes to Federal and State regulations.

3. Department of Transportation requirements and regulation changes.
 4. Security Awareness and Emergency Planning.
 5. Increased controls and 10 CFR Part 37.
 6. Violation and incident review.
 7. Notification procedures.
 8. Radiation surveys and documentation.
 9. Equipment maintenance and documentation.
 10. As Low As Reasonably Achievable (ALARA) commitment.
- B. Successfully completed annual refresher training test for items described in Section A.
- C. Completed training and review of the following regulatory documents:
1. 10 CFR Parts 19, 20, 21, 30, 34, 37, and 71.
 2. New NRC license issued December 17, 2012.
 3. ROEM-2011, Revision 1 (Radiographic Operation Emergency Manual).
 4. NRC Form 3 (Notice to Employees).
 5. Alaska Department of Health and Social Services (DHSS), Radiation Protection.
 6. Blank daily radiation reports.
 7. Blank Trustworthiness and Reliability (T&R) escort log.
 8. Blank exposure device utilization sign out sheet.
 9. Shipper's declaration of dangerous goods.
- D. Completed Radiographic Personnel Training, which included an examination and follow-up practical demonstrations of the following:
1. Use of an exposure device.
 2. Use of personnel monitoring equipment.
 3. Use of radiographic survey meters.
 4. Performance of daily visual inspections.

5. Demonstration of leak test procedures.
 6. Instructions of field audit examinations.
- E. Successfully completed training and examination of:
1. "Golden Rules" of radiography.
 2. "Buddy Check" systems.
 3. Barrier controls.
- F. Completed U.S. Department of Transportation, Hazmat, Emergency Planning, and Security Awareness Training.
- G. Subjected to and passed additional Acuren USA field audits.

The elements of the agreement, as signed by both parties, consist of the following:

- A. The NRC and Mr. Dickerson agreed that on April 10, 2014, Mr. Dickerson caused Acuren USA to be in violation of 10 CFR 34.51 and 10 CFR 34.53 by performing industrial radiographic operations without conspicuously posting the area with radiation and high radiation area signs and without maintaining continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area. However, the NRC and Mr. Dickerson disagree on the deliberate characterization of the violation. More specifically:
1. It is the NRC's view that the preponderance of the evidence supports the proposition that Mr. Dickerson deliberately performed industrial radiographic operations without conspicuously posting the area with radiation and high radiation area signs and without maintaining continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area.
 2. However, Mr. Dickerson disagrees with the deliberate characterization of the violation.

- B. Within 12 months of the issuance date of the Confirmatory Order, if supported by Mr. Dickerson's employer (currently Acuren USA), Mr. Dickerson will provide training to Acuren USA radiographers and radiographer's assistants.
1. Within 30 days before providing the training, Mr. Dickerson will submit the training agenda, materials, or content to the Director, Division of Nuclear Materials Safety (DNMS), Region IV.
 2. The training (e.g., peer-to-peer, teleconference, etc.) will convey personal lessons learned from the associated issue.
- C. Within 18 months of the issuance date of the Confirmatory Order, Mr. Dickerson will meet with and observe (i.e., "shadow") a radiation safety officer as the radiation safety officer performs observations of the performance of radiography crews as described in Section 34.43(e)(1) of 10 CFR Part 34.
1. Mr. Dickerson will perform the field observations of at least four radiographic operations.
 2. The observations will be conducted, to the extent possible, without the crew's knowledge.
 3. The observations will be conducted at temporary job sites (i.e., "in the field").
 4. Mr. Dickerson will notify the Director, DNMS, Region IV, prior to the observations. This notification will be made by telephone at 817-200-1106 or e-mail.
 5. Within 1 month of the completion of each observation, Mr. Dickerson will provide written documentation to the NRC of the date that the observation occurred and the details of the observation (compliances and noncompliances observed, etc.). The information will be sent to the Director, DNMS, 1600 East Lamar Blvd., Arlington, Texas 76011-4511.

D. Within 18 months of the issuance date of the Confirmatory Order, Mr. Dickerson will submit an article to an industry publication or to a certifying entity (as defined in 10 CFR 34.3) for publication.

1. The article will convey personal lessons learned from the associated issue and may be co-written with the other radiographer involved with this case.
2. Mr. Dickerson will provide the article to the Director, DNMS, Region IV, 30 days prior to the submission of the article.
3. Mr. Dickerson will provide to the Director, DNMS, Region IV, demonstration of at least two attempts to publish the article, if publication of the article was not possible.

E. Administrative items.

1. The NRC and Mr. Dickerson agree that the above elements will be incorporated into a Confirmatory Order.
2. The NRC will consider the order an escalated enforcement action with respect to any future enforcement actions.
3. In consideration of the commitments delineated above, the NRC will refrain from issuing a Notice of Violation to Mr. Dickerson for the violation discussed in NRC Investigation Report 4-2014-043 and NRC Inspection Report 030-38596/2014-001 dated March 24, 2016 (IA-16-026).

On July 8, 2016, Mr. Dickerson consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Mr. Dickerson further agreed that this Confirmatory Order will be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that Mr. Dickerson has waived his right to a hearing.

IV

I find that Mr. Dickerson'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. Dickerson's commitments be confirmed by this Confirmatory Order. Based on the above and Mr. Dickerson's consent, this Confirmatory Order is 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, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT:

- A. Within 12 months of the issuance date of the Confirmatory Order, if supported by Mr. Dickerson's employer (currently Acuren USA), Mr. Dickerson will provide training to Acuren USA radiographers and radiographer's assistants.
 - 1. Within 30 days before providing the training, Mr. Dickerson will submit the training agenda, materials, or content to the Director, DNMS, Region IV.
 - 2. The training (e.g., peer-to-peer, teleconference, etc.) will convey personal lessons learned from the associated issue.
- B. Within 18 months of the issuance date of the Confirmatory Order, Mr. Dickerson will meet with and observe (i.e., "shadow") a radiation safety officer as the radiation safety officer performs observations of the performance of radiography crews as described in Section 34.43(e)(1) of 10 CFR Part 34.

1. Mr. Dickerson will perform the field observations of at least four radiographic operations.
 2. The observations will be conducted, to the extent possible, without the crew's knowledge.
 3. The observations will be conducted at temporary job sites (i.e., "in the field").
 4. Mr. Dickerson will notify the Director, DNMS, Region IV, prior to the observations. This notification will be made by telephone at 817-200-1106 or e-mail.
 5. Within 1 month of the completion of each observation, Mr. Dickerson will provide written documentation to the NRC of the date that the observation occurred and the details of the observation (compliances and noncompliances observed, etc.). The information will be sent to the Director, Division of Nuclear Materials Safety, 1600 East Lamar Blvd., Arlington, Texas 76011-4511.
- C. Within 18 months of the issuance date of the Confirmatory Order, Mr. Dickerson will submit an article to an industry publication or to a certifying entity (as defined in 10 CFR 34.3) for publication.
1. The article will convey personal lessons learned from the associated issue and may be co-written with the other radiographer involved with this case.
 2. Mr. Dickerson will provide the article to the Director, DNMS, Region IV, 30 days prior to the submission of the article.
 3. Mr. Dickerson will provide to the Director, DNMS, Region IV, demonstration of at least two attempts to publish the article, if publication of the article was not possible within the 18 month period.

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

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Mr. Dickerson, may request a hearing within 30 days of the issuance date of this Confirmatory Order. 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 directed 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, as amended at 77 FR 46562, August 3, 2012), which is codified in pertinent part at 10 CFR Part 2, Subpart C. 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 (1) request a digital identification (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/getting-started.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 Electronic Filing 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 System (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's 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 Electronic Filing Help Desk through the "Contact Us" link located on the NRC's 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 to (866) 672-7640. The NRC Electronic Filing 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. Dickerson 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 CFR 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 30 days from the date of issuance 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.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Kriss M. Kennedy,
Regional Administrator,
Region IV.

Dated this 11th day of July 2016.