

complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE 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 EIE 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 may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, 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.

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](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of

the Commission, an Atomic Safety and Licensing Board, or a 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. 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 submissions.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

For further details with respect to this exigent license application, see the application for amendment dated July 30, 2008, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 19th day of August 2008.

For the Nuclear Regulatory Commission.

**John P. Boska,**

*Senior Project Manager, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8-19838 Filed 8-26-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No.: 030-10346; License No.: 50-16084-01; EA-08-196]

### In the Matter of Alaska Industrial X-Ray, Inc., Anchorage, AK; Order Modifying License (Effective Immediately)

#### I

Alaska Industrial X-Ray, Inc. (AIX or Licensee) is the holder of Materials License No. 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, and due to expire on March 31, 2011. The license authorizes AIX to possess and use sealed radioactive sources in conducting industrial radiography activities in accordance with the conditions specified therein.

#### II

In June 2007, the NRC conducted an onsite inspection and began an investigation into AIX activities to determine whether deliberate violations of NRC requirements occurred. During the investigation, the NRC discovered that AIX radiographers had conducted radiography activities in violation of 10 CFR 34.41(a) on multiple occasions at the Arctic Slope Regional Corporation Energy Services (ASRC) site and the Golovin site, both temporary jobsites. Of concern is that the NRC previously had issued an identical violation of 10 CFR 34.41(a) involving deliberate misconduct at the ASRC site on April 25, 2001 (EA-01-015). Based on the preliminary information from the investigation, the NRC issued an Order Suspending Licensed Activities (EA-07-261) on October 19, 2007, which, among other conditions, required that AIX suspend its radiography activities until adequate assurance could be provided by independent means that AIX would comply with NRC requirements when conducting licensed activities. On November 8, 2007, the NRC relaxed the Order based on several actions taken and commitments made by AIX to the NRC. The Order was a temporary measure while the NRC completed its investigation and reviewed the results. Once completed, the results of the inspection and investigation were discussed with AIX during a telephonic exit briefing on April 23, 2008, and were documented in NRC Inspection Report No. 030-10346/07-01 dated May 20, 2008.

On June 5, 2008, a predecisional enforcement conference (PEC) was

conducted with AIX in Anchorage, Alaska, to discuss with the company and its employees the apparent violations, their significance, their root causes, and any corrective actions. The individuals of concern included two full-time radiographers, a part-time radiographer, and the former radiation safety officer (RSO) who, at the time of the PEC, was employed by AIX as a full-time radiographer. During the PEC, the four individuals admitted to committing deliberate violations of 10 CFR 34.41(a) at the ASRC site on multiple occasions over a period of several years. This information was substantively consistent with their sworn statements provided to the NRC Office of Investigations. Based on the investigation, the NRC concluded that this violation had occurred on multiple occasions from about 2004 until the investigation in June 2007.

In addition, during the PEC, the NRC staff discussed with the president of AIX that during his first interview on July 24, 2007, he denied that violations of the two-person rule had occurred at the ASRC site. Later, on July 25, 2007, when confronted with information that showed that his radiographers had indeed deliberately violated the two-person rule at the ASRC site, the company president stated that he suspected violations of the two-person rule had occurred at the ASRC site, but took no action to investigate his suspicions or discuss this with his personnel. As a result, the NRC has concluded that the AIX president, with careless disregard, provided the NRC with information about the company that was incomplete or inaccurate, in violation of 10 CFR 30.9(a).

During the PEC, the NRC noted that in 2001 it had issued a Severity Level III violation of 10 CFR 34.41(a) to AIX for deliberate failures to follow the two-person rule at the ASRC site.<sup>1</sup> The fact that a prior enforcement action had been issued for the same violation at the same location was a significant concern to the NRC because it raised questions about the effectiveness of AIX management oversight to prevent recurrence of violations.<sup>2</sup> In fact, a few years later in about 2004, the former AIX RSO, and

almost all of AIX's radiographers and assistant radiographers who worked at the ASRC site, began deliberately failing to follow the two-person rule at the ASRC site. Further, the reason the violations reoccurred in 2004–2007 were very similar to the reasons the violations occurred in 2001: The radiographers felt that one-person radiography was safe at the ASRC site, and following the two-person rule was unnecessary because radiographic exposures were performed inside a structure that AIX had built prior to 2001, intended to meet NRC specifications for a permanent radiographic installation.<sup>3</sup>

During the PEC, the company president stated that he could understand why AIX personnel failed to follow the two-person rule and that he (the company president) might have done it himself if he were conducting radiography. One of the reasons for this was the general belief that the structure provided a similar level of protection as a permanent radiographic installation.

The company president stated that he “probably suspected” that AIX radiographers were not abiding by the two-person rule, but that he “never went [to the ASRC site] and tried to catch anybody at it.” Thus, NRC representatives also questioned AIX regarding the lack of management oversight from both the former AIX RSO and the company president.

In addition to the deliberate violations of 10 CFR 34.41(a) and the willful violation of 10 CFR 30.9(a), the NRC representatives noted three additional concerns during the June 2008 PEC. First, during a tour of the ASRC site, the day prior to the June 5th conference, the two trailers which formed the sides of the structure were found to be unlocked and open. This was of concern to the NRC staff because of the potential that ASRC personnel (considered members of the public for purposes of the regulations) might access the trailers during radiography and be exposed to radiation or remove some of the trailer contents, which could reduce the level of shielding. In addition, this undermined NRC's confidence in AIX to meet its commitments because in its letter dated November 1, 2007, AIX committed to keep the trailers locked and to control access to the trailers. This

commitment was made to the NRC as a consideration for lifting the Order Suspending License dated October 19, 2007. On June 4, 2008, the NRC staff requested that AIX review the issue and provide additional assurance it would meet its commitments to the NRC. Second, the NRC staff was concerned that radiation streaming could occur through the back of the structure because there was an opening in between the two trailers which formed the back of the structure. The staff questioned whether radiation surveys were conducted to establish that the radiation rope boundaries were adequate. This was important because of the possibility that ASRC personnel (considered members of the public) might at times be present behind the structure and could be exposed to radiation areas in excess of NRC limits. And third, the NRC staff noted that although the focus of the June 5th PEC was deliberate violations associated with radiography at the ASRC site, other examples of failures to comply with 10 CFR 34.41(a) were identified at AIX's Golovin site. Although the NRC did not find any deliberate misconduct associated with the 10 CFR 34.41(a) violations at the AIX Golovin site, corrective actions were needed to correct the violations at that site.

AIX's corrective actions presented at the June 5th PEC included: (1) Continuing to contract with an independent contractor to conduct inspections of AIX radiographers, as AIX committed in response to the NRC's Order Suspending Licensed Activities (EA-07-261) dated October 19, 2007; (2) changing the RSO in November 2007; (3) reducing the number of radiographic exposures at the Golovin site with NRC-licensed material; (4) modifying contractual agreements with ASRC to reduce schedule pressures and to ensure compliance with 10 CFR 34.41(a); and (5) instituting a disciplinary policy to terminate any radiographer who did not follow the two-person rule. The NRC representatives also discussed concerns about whether the independent oversight was as effective as it could or should be.

These corrective actions did not address the NRC's concerns about AIX's lack of management oversight in AIX's radiography activities including the failure to ensure that its employees, including the former AIX RSO, were following NRC requirements, despite the company president's suspicions that violations were occurring, as well as the fact that corrective actions for the 2001 enforcement action were not effective. As a result, the NRC representatives provided AIX with more time to provide

<sup>1</sup> On April 25, 2001, the NRC issued a Notice of Violation for a Severity Level III violation involving a failure to meet the requirements of 10 CFR 34.41(a) (EA-01-015).

<sup>2</sup> As part of the corrective actions for the 2001 violation involving deliberate failures to follow the two-person rule at the ASRC site, the AIX company president, its former RSO, and all radiographers and assistant radiographers signed a memorandum, in February 2001, acknowledging that the two-person rule was to be followed at the ASRC site. A copy of the memorandum was presented to the NRC in March 2001.

<sup>3</sup> In 2001–2002, AIX had requested that the NRC approve the structure it had built at the ASRC site as a permanent radiographic installation. However, the structure required extensive modifications in order to meet NRC requirements. AIX did not make the modifications and, as a result, the NRC never approved it. If the structure had been approved, then AIX would have been authorized to conduct radiography with only one individual instead of two.

any additional corrective actions. By letter dated June 9, 2008, AIX provided additional corrective actions which included: (1) Conducting monthly safety meetings; (2) a commitment from the company president to independently and personally review (audit) each crew on a quarterly basis at a minimum; (3) performing surveys around the ASRC radiation exposure area, where instantaneous dose rates were found to exceed 20 millirem/hour in several areas, and AIX applying additional dirt (shielding) to the perimeter of the structure; and (4) locking and rebolting the doors to the trailers at the ASRC site which AIX uses as shielding around the area where radiographic exposures are performed.

In summary, based on the information developed during the inspection, the investigation, and the PEC, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) dated the same day as this Order, and the circumstances surrounding them are described in detail in the subject inspection report and the cover letter accompanying this Order. The violations involve: (1) Performing radiography at a location other than a permanent radiographic installation without the presence of two qualified individuals, in violation of 10 CFR 34.41(a), and (2) failing to provide the NRC with information that was complete and accurate in all material respects, in violation of 10 CFR 30.9(a). The NRC has determined that willfulness was associated with both violations.

In assessing the safety significance of the violations, the NRC notes that, absent deliberate misconduct, performing radiography in violation of the two-person rule is significant because the use of two qualified persons during radiographic operations not only provides for a high level of assurance that members of the public will be prevented from entering the restricted area during those operations, but also provides additional protection for the radiographers should one of them become incapacitated while the source is unshielded. The second violation, providing the NRC with incomplete or inaccurate information, impacts the NRC's ability to perform its regulatory function. The violations were more significant given the pervasive deliberate misconduct on the part of the AIX radiographers and assistant radiographers, as well as a senior company official, the RSO at the time; and the careless disregard on the part of the president of the company, in

providing the NRC with information that was incomplete or inaccurate. Therefore, these violations have been categorized in accordance with the NRC Enforcement Policy at Severity Level II.

The NRC has determined that additional actions<sup>4</sup> are needed to provide reasonable assurance that the public health and safety, as well as the health and safety of AIX employees, will be maintained. The circumstances in this case raise serious concerns about AIX company management's ability or desire to ensure licensed activities are conducted without undue risk to the public's health and safety, and that commitments made to the NRC are honored. Therefore, the NRC is issuing an Order to require (1) Continued independent oversight with additional specific conditions to ensure AIX's radiographers follow NRC requirements, (2) that the trailers be locked and that AIX maintain control over the key, (3) that AIX contract with an independent consultant to evaluate the AIX radiation safety procedures for effectiveness, and to provide training to AIX radiographers and assistant radiographers, and (4) that the president of AIX, perform quarterly audits of your radiographers.

### III

Based on the above, the NRC has determined that AIX company management, including the company president, have not provided the level of oversight needed for the company to conduct its activities in compliance with NRC requirements and to meet all its commitments to the NRC. Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 50-16084-01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health and safety interest require that License No. 50-16084-01 be modified to require additional actions so as to provide reasonable assurance that the health and safety of the public will be protected. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations described above is such that the public health and safety interest

<sup>4</sup> These actions are in addition to, and separate from, the attached Notice, which imposes a civil penalty at twice the base for the Severity Level II problem in the total amount of \$20,800. As fully set out in the Notice, the civil penalty was issued to emphasize the importance of not engaging in deliberate misconduct, self-identifying violations, and taking prompt and comprehensive corrective actions.

require that this Order be immediately effective.

### IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 2.205, 10 CFR parts 20, 34, and 10 CFR 150.20, *it is hereby ordered*, effective immediately, that License No. 50-16084-01 is modified as follows:

(1) AIX shall continue use of an independent contractor to provide independent oversight of AIX operations.

(a) AIX shall notify the NRC by fax and the contractor documented in AIX's letter dated November 1, 2007, by phone, fax or e-mail, on a weekly basis, of the anticipated AIX work schedule for that week. AIX will immediately notify the contractor daily, by phone, fax and or email, as requested by the contractor, of any changes to AIX scheduled activities. AIX must inform the contractor in writing that the provisions of 10 CFR 30.10 apply to the contractor.

(b) The contractor must conduct unannounced audits and observations of AIX radiography crews during radiographic exposures in a manner and location where he is undetected by the radiography crew. After observing the crews, the contractor may announce himself to the crew in order to complete his audits of the jobsite. The audits must verify that AIX personnel are conducting all operations in a safe manner and in compliance with NRC requirements. The contractor 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.

(c) The unannounced audits shall be conducted at least twice a month when work is being performed.

(d) At least 50 percent of the time, on average over a year, the contractor must conduct unannounced audits during the second half of work that is scheduled outside of normal business hours. Normal business hours are 8 a.m. to 5 p.m.

(e) The contractor will provide AIX a monthly report of his audit activities. The information will be provided to NRC Region IV at the same time the contractor provides the results to AIX. At a minimum, the information provided shall include: The date and times of the audit; the hours (time of the day) in which the crew worked; the names of the radiographers and assistant radiographers involved in the work;

whether the contractor was detected by the crew prior to the contractor announcing his presence; and whether or not radiographic operations were performed safely and in compliance with NRC requirements. The monthly reports will be sent to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(f) Individuals with whom AIX contracts to meet this requirement, must be approved in advance. AIX currently contracts with an individual who has received prior approval and further approval for this individual is not needed. In order to receive prior approval for another individual to perform these independent audits, AIX must provide the NRC with information regarding the individual's qualifications and information concerning any prior working relationships the individual has had with AIX. This information should be sent to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(2) The trailers that surround the radiographic site at ASRC will be locked during the conduct of radiography. AIX must maintain control over the key such that ASRC personnel cannot obtain the key without the AIX company management's approval.

(3) AIX will contract with an independent consultant to evaluate the effectiveness of its radiation safety and compliance programs.

(a) Within 60 days of the date of this Order, AIX will submit to the NRC for approval, the name(s) and qualifications of an independent consultant to review and evaluate AIX's radiation safety program and compliance program;

(b) Within 30 days of NRC approval of the consultant, the consultant will commence an assessment of AIX's radiation safety program;

(c) The consultant's assessment will review AIX's training program as follows:

(i) Physical observation of each of AIX's radiographers and assistant radiographers, on multiple occasions, during the conduct of radiographic operations, verifying their actions ensure radiation safety and compliance with NRC requirements. At least 25 percent of the observations will be conducted at the ASRC site. The purpose of the observation is to evaluate compliance with NRC requirements and to provide recommendations to AIX management about improving the work practices of AIX radiographers to comply with NRC requirements. The consultant should consider providing recommendations to AIX for complying with NRC requirements during inclement weather (e.g., winter

conditions) during radiographic operations.

(ii) Perform independent radiation measurements around AIX's structure used at the ASRC site, taking into account changes in the shielding characteristics as material inside the trailers that form the walls of the structure vary. The purpose of the measurements will be to demonstrate compliance with 10 CFR part 20 limits.

(iii) Evaluate AIX's Operating and Emergency Procedures.

(iv) Evaluate the effectiveness of the current AIX RSO to oversee the AIX radiation safety program and to ensure compliance with NRC requirements;

(v) Within 30 days following completion of its reviews, the consultant will provide AIX a report discussing its findings and recommendations for program improvements. At the same time the consultant provides its report to AIX, the consultant will send a copy to the Director, Division of Nuclear Material Safety, U.S. NRC Region IV.

(d) Within 30 days of receiving the consultant's report, AIX will provide the NRC, in writing, its position on how it will address the consultant's findings. In its correspondence to the NRC, AIX will identify which of the consultant's recommendations it will implement and the time frame in which it will implement the recommendations. For those recommendations AIX does not accept, AIX will provide the NRC with its justification.

(e) The consultant will provide training to all AIX employees, managers, and officials. The training will include:

(i) A review of the radiation mishaps involving radiography devices or gauges;

(ii) A review of the potential actions that NRC may take against an individual;

(iii) A review of NRC requirements, AIX's license conditions; and

(iv) A review of AIX's Operating and Emergency Procedures.

(4) The president of AIX shall perform quarterly audits of his radiographers as they conduct radiography. The audits shall include observations of his crew during radiographic exposures and, to the extent possible, must include observations such that the crew cannot detect his presence. At least 25 percent of the observations will be conducted at the ASRC site during the second half of work that is scheduled outside of the normal business hours of 8 a.m. to 5 p.m. The president of AIX 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 his observations.

(5) Information that is required to be sent to the NRC in Conditions 1-4 above shall be addressed to: Director, Division of Nuclear Materials Safety, U.S. NRC Region IV; 612 East Lamar Blvd., Suite 400, Arlington, TX 76011.

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

## V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic

Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE 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 EIE 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, 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.

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](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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. 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 works.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. 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 IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension

expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 20th day of August 2008.

For the Nuclear Regulatory Commission.

**Cynthia A. Carpenter,**

*Director, Office of Enforcement.*

[FR Doc. E8-19831 Filed 8-26-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[IA-08-006]

### In the Matter of Mr. Kenneth J. Vandiver; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Kenneth J. Vandiver is employed as a radiographer at Alaska Industrial X-Ray, Inc. (AIX) located in Anchorage, Alaska, and until November 2007, Mr. Vandiver was the radiation safety officer (RSO) for AIX. AIX holds License No. 50-16084-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34 to conduct radiography. The license authorizes AIX to possess sealed radioactive sources for use in conducting industrial radiography activities in accordance with the conditions specified therein.

II

On June 4, 2007, an investigation was initiated by the NRC's Office of Investigations (OI), in part, to determine whether Mr. Vandiver, as RSO, engaged in deliberate misconduct by performing radiography with only one radiographer present at the Arctic Slope Regional Corporation Energy Services (ASRC) facility, a temporary jobsite. A predecisional enforcement conference (PEC) was held on June 5, 2008, with employees of AIX, including Mr. Vandiver, in an effort to obtain AIX's point of view on the violations.

Based on our review of the information obtained during the PEC and from the investigation, two violations of the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, were identified.

First, Mr. Vandiver engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) by causing AIX to be in violation of 10 CFR 34.41(a) when he conducted radiography alone at the ASRC facility on numerous occasions since about 2004. Second, he provided information that he knew was