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,* 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 Mr. Vandiver 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 Mr. Vandiver 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), Mr. Vandiver, 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. E8–19832 Filed 8–26–08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA–08–008]

In the Matter of Mr. Patrick A. Kelly; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Patrick A. Kelly is employed as a radiographer at Alaska Industrial X-Ray, Inc. (AIX) located in Anchorage, Alaska. 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. Kelly 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. Kelly, 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. Kelly 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) (also called the two-person rule) when he

conducted radiography alone at the ASRC facility on numerous occasions since about 2004. Second, he provided information that he knew was incomplete and inaccurate during his sworn statement to NRC investigators, in violation of 10 CFR 30.10(a)(2), on July 24, 2007.

During his interview on July 24, 2007, Mr. Kelly admitted to conducting radiography by himself at the AIX Golovin site because he thought it was a permanent radiographic installation. If it were a permanent radiographic installation, conducting radiography with only one qualified individual would have been allowed under NRC regulations. However, the NRC inspector pointed out that the AIX Golovin site was not approved as a permanent radiographic installation and, therefore, two qualified individuals were required to be present during radiography. The NRC did not find that Mr. Kelly engaged in deliberate misconduct with regard to violating the two-person rule at the Golovin site. However, during that interview, he denied that there were times when he conducted radiography by himself in violation of the two-person rule at the ASRC site. Later, when asked if he always followed the two-person rule at the ASRC site, he answered yes. When asked if he could remember any of the other AIX radiographers conducting radiographic operations with less than two people, he answered no.

However, on January 10, 2008, after being confronted with information from other radiographers and radiographers' assistants that he had performed radiography by himself at times at the ASRC site, Mr. Kelly admitted to deliberately violating the two-person rule (10 CFR 34.41(a)). Mr. Kelly stated that although he worked mainly at another client's facility, there were times when he worked at the ASRC site and some of those times he conducted radiographic operations in violation of the two-person rule. He stated that he, along with the former AIX radiation safety officer and another AIX radiographer took it upon themselves to decide it was acceptable to conduct radiography in violation of the two-person rule because of the facility that AIX had built at the ASRC site.[1] He stated that when one person was ''shooting'' (conducting radiography), the other person would just return to the AIX Golovin site to develop film. He stated, ''We knew we were breaking the rules.''

The NRC notes that Mr. Kelly was aware of previous NRC enforcement action taken against AIX,[2] and was present at the March 2001 predecisional enforcement conference with AIX when the NRC and AIX discussed whether another AIX employee engaged in deliberate misconduct for conducting radiography by himself at the ASRC site. This is the same violation at the same location that is being cited herein, and as part of AIX's corrective action, all AIX radiographers, including Mr. Kelly, signed a memorandum in February 2001 acknowledging that the two-person rule for radiographers and radiographer assistants requires that, during exposures, two individuals must monitor the radiation area. This memorandum was attached to a letter dated March 12, 2001, in which AIX stated that all radiographers had been advised of the two-person rule. This letter was discussed during the March 2001 predecisional enforcement conference which Mr. Kelly attended.

III

The NRC must rely on Licensees and their employees to act with integrity in complying with NRC requirements, and communicating with candor. Mr. Kelly's actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Kelly will perform licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Kelly were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health and safety interest require that Mr. Kelly be prohibited from any involvement in NRC-licensed activities for a period of 1 year from the date of this Order. Additionally, Mr. Kelly is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1-year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Kelly's conduct described above is such that the public health and safety interest 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, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR Parts 20, 34, and 10 CFR 150.20, *it is hereby ordered,* effective immediately, that:

1. Mr. Patrick A. Kelly is prohibited for 1-year 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.

2. If Mr. Kelly is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 1 year after the 1-year period of prohibition has expired, Mr. Kelly shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Kelly shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

In accordance with 10 CFR 2.202, Mr. Patrick A. Kelly 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, Mr. Kelly 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

[1] 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.

[2] 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).

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,* 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(TM) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer(TM) 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*, 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 Mr. Kelly 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 Mr. Kelly 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), Mr. Kelly, 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. E8–19833 Filed 8–26–08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Office of New Reactors; Supplement to Interim Staff Guidance; Limited Work Authorizations Solicitation of Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comment.

SUMMARY: The NRC is issuing a supplement to its Proposed Interim Staff Guidance (ISG) COL/ESP–ISG–004 for use and comment. This supplemental guidance would be added, along with the resolution of other issues identified in comments received from the public, to COL/ESP–ISG–004 to provide clarifications and examples related to